

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 49/07; Petition 613-03
Session: Hundred Twenty-Eighth Session (16 – 27 July 2007)
Title/Style of Cause: Luis Rey Garcia Villagran v. Mexico
Doc. Type: Decision
Decided by: President: Florentin Melendez;
First Vice-President: Paolo Carozza;
Second Vice-President: Victor Abramovich;
Commissioners: Sir Clare K. Roberts, Evelio Fernandez Arevalos, Freddy Gutierrez Trejo.
Dated: 23 July 2007
Citation: Garcia Villagran v. Mexico, Petition 613-03, Inter-Am. C.H.R., Report No. 49/07, OEA/Ser.L/V/II.130, doc. 22 rev. 1 (2007)
Represented by: APPLICANT: Martha Martinez de la Fuente
Terms of Use: Your use of this document constitutes your consent to the Terms and Conditions found at www.worldcourts.com/index/eng/terms.htm

I. SUMMARY

1. On June 3, 2003, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission”, or “the IACHR”) received a petition lodged by Martha Martínez de la Fuente (hereinafter “the petitioner”), alleging the international liability of the United Mexican States (“the State”) for alleged illegal detention, unwarranted delay in the application of justice, lack of investigation, acts of torture, abuse of authority, solitary confinement, and noncompliance with resolutions granted for the protection of Luís Rey García Villagrán. The petitioner alleges that the events that gave rise to the petition constitute violations of the rights to humane treatment, personal liberty, a fair trial, and judicial protection, enshrined in Articles 5, 7, 8, and 25 of the American Convention on Human Rights (hereinafter “the American Convention”), all in relation to the general duty to respect and protect the rights enshrined in Article 1(1) of the same instrument. Likewise, Articles 8 and 10 of the Inter-American Convention to Prevent and Punish Torture (hereinafter “Convention against Torture”).

2. The petitioner alleges that her husband, Luís Rey García Villagrán, has been unjustly imprisoned for ten years for a crime of which he was falsely accused. She states that during his imprisonment he was subjected to torture by the judicial police in order to make him confess to his participation in the crime of unlawful deprivation of liberty in the form of abduction or kidnapping (*privación ilegal de persona en su modalidad de plagio o secuestro*). The petitioner alleges that since Mr. García Villagrán was detained he has received no specialist medical care for the detachment of the retina in his right eye. Furthermore, she alleges that he was illegally transferred to Prevention and Social Re-adaptation Center No. 15 in the municipality of Copainala Mezcalapa, Chiapas, where he was kept in solitary confinement and far from his family, despite a resolution in response to *recurso de amparo* No. 630/2002, granting the

provisional suspension of the transfer. She also states that there is a writ of amparo before the Fifth District Court in the State of Chiapas concerning Mr. García Villagrán's solitary confinement in Prevention and Social Re-adaptation Center No. 15 that orders the suspension of the measures under which he is kept in solitary confinement. She alleges that the present petition is admissible because the confession obtained from Mr. García Villagrán by torture was allowed and government authorities failed to observe the resolutions in response to the writs (recursos de amparo), and since July 6, 2005, he has been transferred to another prison, "Puente Grande", which is two thousand kilometers away from where his family lives.

3. The State alleges that Mr. García Villagrán was arrested on July 6, 1997 by officers of the Chiapas State judicial police for the crimes of kidnapping and conspiracy (asociación delictuosa). The Public Prosecutor's Office (Ministerio Público) identified factors and circumstantial evidence that indicated Mr. García Villagrán's liability and therefore decided to take criminal proceedings against him. The judge subsequently issued the formal arrest warrant. On December 4, 1998, the judge issued a guilty verdict and imposed on García Villagrán a sanction of forty years' imprisonment for those crimes, which was appealed by the defense. On September 5, 2002, the criminal judge of First Instance pronounced a new sentence in his favor, reducing the sentence to 38 years' imprisonment for the crime of kidnapping, and acquitting him of the crime of conspiracy. The State alleges that subsequently, Mr. García Villagrán filed several recursos de amparo, which were not granted. The State therefore alleges the case is inadmissible because the result of the writs lodged by Mr. García Villagrán does not fall within the competence of the IACHR, because it would be a fourth jurisdictional level. With regard to the claims of abuse and torture alleged to have been perpetrated by police officers when arresting Mr. García Villagrán in order to force a confession out of him, the State says that preliminary investigations 1731/2A/2002 have been launched against Rubén de Jesús Pérez Gallegos, Jorge Luís Camacho López, Eduardo López Levarios for the crime of abuse of authority in which evidence was found that suggested the possible involvement of public servants in acts of torture.

4. Without prejudice to the merits of the case, the IACHR concludes in this report that the case is admissible because it meets the requirements described in Articles 46 and 47 of the American Convention. The Inter-American Convention decides to notify the decision to the parties and to continue with the examination of the merits relating to the alleged violation of the American Convention, to publish the present report, and to include it in its Annual Report to the General Assembly of the OAS.

II. PROCESSING BY THE COMMISSION

5. On June 3, 2003, the Inter-American Commission received the petition in which the petitioner also lodged her request for precautionary measures in favor of Mr. Luís Rey García Villagrán. The number 613-03 was given to the petition and 601/03 to the request for precautionary measures.

6. On August 15, 2003, the IACHR requested information from the petitioner in relation to her request for precautionary measures. On June 23, 2003, Mr. García Villagrán sent additional information regarding the precautionary measures requested. On September 2, 2003, the

petitioner responded to the request for information. On April 11, 2007, the petitioner lodged a request for precautionary measures in favor of Mr. García Villagrán.

7. On December 11, the petition information was transmitted to the State. On February 13, 2004, the State requested an extension in order to submit information relevant to the petition. On April 6, 2004, the State provided information concerning the petition, which was transmitted to the petitioner on April 21, 2004. On April 22, 2004, the State remitted additional information. On April 23, 2004, this additional information was forwarded to the petitioner. On May 24, 2004, the petitioner presented additional information. On November 23, 2004, this information was transmitted to the State. On December 28, 2004, the State provided further information. On December 30, 2004, this information was transmitted to the petitioner. On June 10, 2005, the petitioner submitted information. On March 17, 2006, the petitioner presented additional information. On May 25, 2006, this information was transmitted to the State. On June 29, 2006, the State provided information which was forwarded to the petitioner on March 16, 2007. On April 20 and May 8, 2007, the petitioner presented additional information.

III. POSITIONS OF THE PARTIES

A. Petitioners

8. The petitioner alleges that her husband, Luís Rey García Villagrán, was detained on July 3, 1997 by police officers in the city of Tapachula, Chiapas, for the alleged perpetration of the crime of unlawful deprivation of liberty in the form of abduction or kidnapping. She states that the arrest was carried out without an arrest warrant having been signed by any judicial authority, in violation of Article 16 of the Mexican Political Constitution, and nor was any flagrancy or urgency alleged in order to carry out the arrest.

9. The petitioner states that Mr. García Villagrán was tortured by police officers when he was transferred to the city of Tuxtla Gutiérrez, Chiapas, and during the time he was under arrest, so that he would confess to having committed the crime attributed to him of unlawful deprivation of liberty in the form of abduction or kidnapping. She states that García Villagrán was in the hands of the police and the prosecutors for one hundred and forty-four hours before being brought before the judge, and that during this time, he was tortured physically and psychologically.

10. She alleges that when Mr. García Villagrán was arrested he had just undergone surgery on a detached retina, and healing was underway, but when he was arrested, he was hit and tortured and this brought about the loss of vision in his right eye. She states that Dr. Edgar Solano Tego, the private retinal ophthalmologist who treated him, diagnosed that García Villagrán was suffering from a “partially detached retina”. She indicates that torture has been duly established and the existence of injuries authenticated by the prosecutors’ office, medical certificates issued by the medical staff belonging to the Office of Expert Services of the Mexican Attorney General’s Office (Procuraduría General de Justicia), as well as by judicial authorities with documentary proof existing in the criminal case 270/997 launched in the Second Criminal Court of the judicial district of Soconusco, Chiapas. She states that between the time García Villagrán was arrested and when he was transferred to the “Puente Grande” Social Re-adaptation

Center on July 6, 2005, he had only had three specialist medical consultations which she had paid for and that during the 7 years and 7 months he has received no specialist medical care from the State.

11. The petitioner alleges that the Judge overseeing the criminal case accepted as valid the supposed confession made by García Villagrán under torture even though the torture allegations were known to him. The petitioner states that she therefore claims it is unconstitutional because the Judge had before him for his examination the July 7, 1997 hearing in which García Villagrán denounced the torture and stated that his “eyes were bound and his hands tied up and he was kept in solitary confinement for several days.” She states that Amnesty International published a report titled “Mexico, Unfair Trials: unsafe convictions,” in which it confirms the acts of torture perpetrated on García Villagrán. The report says:

Luís Rey García Villagrán, a former member of the state judicial police (PJE), was violently forced into one of the police vehicles. The police reportedly told him that they were going to make him “disappear”. According to his testimony, he was blindfolded and tied to a tree where he was punched in the back and hit with a weapon on various parts of his body. He was taken to the offices of the PJE where he was put in a tank filled with water. His hands were tied at shoulder height to a tube. That night several people arrived and tried to make him sign a document, but he refused. [...] When Luís García asked for a lawyer he was allegedly told, “We are all lawyers here,” and when he asked for someone of confidence, he reportedly was told, “We are all of confidence here.” He was then beaten again. A person who said he was a representative of the Public Ministry said that he would take Luís García’s statement. When Mr. García refused, he was allegedly beaten and kicked. He remained incommunicado until the afternoon of 6th July. He was then taken out of his cell, photographed, and threatened by the police who reportedly told him that they were going to make him “disappear”. That night he was taken to the Cerro Hueco prison.[FN1]

[FN1] Amnesty International Report: xx AMR 41/007/2003. See in <http://web.amnesty.org/library/ESLAMR410072003?open&of=ESL-MEX>.

12. The petitioner states that she later lodged a complaint with the Chiapas State Human Rights Committee regarding the alleged arbitrary detention and acts of torture perpetrated on García Villagrán. The Human Rights Committee issued a recommendation to the Attorney General’s Office along the following lines:

1. To investigate the public servants who took part in the arrest of Mr. Luís Rey García Villagrán.
2. To take the steps necessary to improve the investigation of the crimes of abuse of authority, arbitrary arrest, and torture, to which Luís Rey García Villagrán was subjected.
3. If any irregularities should be identified in the behavior of any public servant involved in the case, to adequately compensate Mr. García Villagrán for the violation of his human rights.
4. To instruct the forensic experts attached to the Chiapas General Procurator’s Office, PGJ-Chis, so that in future they apply the “Principles that should be taken into account by doctors in

investigations into torture,” as defined by the United Nations Commission on Human Rights. [CHECK IF COMMISSION OR COMMITTEE]

13. The Petitioner states that García Villagrán lodged a complaint with the Chiapas Office of the Attorney General’s Office denouncing the arrest, torture, and abuse of authority, naming Rubén de Jesús Pérez Gallegos, Jorge Luís Camacho López, and Eduardo López Levarios and other members of the Judicial Police in the State of Chiapas who took part in his arrest. Initial investigation No. CPJA/1731/2002 was launched and made the responsibility of the judge on duty, who in the sentence issued in the previous criminal proceedings had attached no value to his judicial inspection.

14. The petitioner states that on November 13, 2002, García Villagrán was brutally taken from the Tapachula prison by more than 300 police officers allegedly because of a mass escape and was transferred to Prevention and Social Re-adaptation Center No. 15 in the municipality of Copainala, Mezcalapa, Chiapas where he was kept in solitary confinement and far from his family. She alleges that in that prison there was a plan to kill her husband because the government had declared that he was a dangerous prisoner.

15. The petitioner states that the Chiapas State Human Rights Committee officially opened file CEDH/1152/112002 because of the alleged violations of human rights committed against the prisoners in Prevention and Social Re-adaptation Center No. 3 in the city of Tapachula de Córdoba y Odóñez, Chiapas who were transferred to Prevention and Social Re-adaptation Center No. 15. On June 25, 2003, the State Committee issued recommendation CEDH/040/2003, which, with reference to the transfer of García Villagrán on November 13, 2002, states the following:

...constitutes a violation of the human rights of the victim [Luís Rey García Villagrán] because he is still subject to proceedings in criminal trial 324/97, on the list of the Second Court of the Criminal Branch of the Judicial District of Tapachula, for the crime of unlawful deprivation of liberty in the form of abduction or kidnapping; the above conclusion is reached notwithstanding those arguments used to attempt to justify the transfer of the abovementioned prisoner, that is: Reasons of prison security...infringe the human rights of the victim because according to the agreement reached during the extraordinary meeting of the Inter-disciplinary Technical Council on November 5, 2002, has been left totally defenseless because the victim has not been accorded the right to legality and a fair trial as established in Articles 14 and 16 of the political constitution of the United Mexican States. [...] The rights of the victim are infringed in so far as the extraordinary writ issued by the Inter-disciplinary Technical Council on November 5, 2002, leaves him in a totally defenseless state, because it does not protect his right to legality and a fair trial as established in Articles 14 and 16 of the political constitution of the United Mexican States which impose on all state authorities the obligation to seek the defense of those who might be affected.

16. The petitioner states that the transfer of García Villagrán to another prison was because of his behavior in Prevention and Social Re-adaptation Center No. 3 in Tapachula de Córdoba y Ordóñez, Chiapas, because of the criticisms he made to the media of the systematic violations of the human rights of the detainees and the deficiencies of the State’s penitentiary system. Therefore, the extraordinary writ issued by the Inter-disciplinary Technical Council on

November 5, 2002, was signed in violation of the International Covenant on Civil and Political Rights, and the American Convention because the justification for the transfer was principally as a preventive measure so that the prisoner could not continue to exercise his civil and political rights, of which no authority could deprive him. Furthermore, she states that García Villagrán was never informed of the acts attributed to him so that he could exercise his right to defend himself.

17. The petitioner states that she also lodged a complaint with the State Human Rights Commission, alleging arbitrary arrest and acts of torture. The complaint was number CEDH/068/2003 and led to the resolution that the human rights of García Villagrán had been violated by the physical and moral violence to which he was subjected. The State Human Rights Commission also requested precautionary measures from the prison authorities because of the solitary confinement in which the petitioner's husband was being held in Prevention and Social Re-adaptation Center No. 15 when he had been labeled a subversive because he defended his human rights and wore Amnesty International and "No to Torture", t-shirts. According to the petitioner, only the intervention by the State Human Rights Commission, during the administration of Mr. Pedro Raúl López Hernández, was able to rescind the punishment.

18. The petitioner alleges that in view of the arbitrary and unlawful transfer of her husband García Villagrán to Prevention and Social Re-adaptation Center No. 15, she filed a writ of amparo No. 630/2002 before the Fourth District Court of the State of Chiapas, which granted her a provisional suspension of the transfer until a judgment on guarantees had been resolved. However, the transfer of her husband to Prevention and Social Re-adaptation Center No. 15 took place just the same, in clear violation of the writ of amparo issued on November 12, 2002 and therefore was unconstitutional because the document authorizing the prison transfer was unfounded and contrary to law.

19. She also alleges that in Prevention and Social Re-adaptation Center No. 15, Mr. García Villagrán was sent to a punishment cell for thirty days and for a third time, for alleged administrative misdeeds, for which the appropriate punishment is 36 hours detention, but he was kept in solitary confinement unable to leave his cell, and without access to the telephone. She states that given his solitary confinement, she filed a writ of amparo 274/2004 before the Fifth District Judge. The writ of amparo, dated February 27, 2004, ordered the immediate suspension of any act that kept him in solitary confinement.

20. She states that in January 2005, Mr. García Villagrán was returned to Prevention and Social Re-adaptation Center No. 3, in Tapachula, Chiapas following the intervention of the organization Christian Action for the Abolition of Torture (Acción de los Cristianos para la Abolición de Tortura). However, on July 6, 2005, García Villagrán was transferred without warning and without possibility of defense, to a maximum security prison in Jalisco called "Puente Grande", which is two thousand kilometers from Tapachula, where his family lives. She alleges that this transfer was made on the basis of a personality study which identified García Villagrán as a dangerous person, and that this is against the Political Constitution of Mexico. She says that in his present circumstances, it is impossible for García Villagrán to maintain any relationship with his family.

21. The petitioner alleges that the judgment dated December 4, 1998, handed down by the judge of first instance, sentenced García Villagrán to 40 years' imprisonment for the crime of unlawful deprivation of liberty in the form of abduction or kidnapping and for the crime of conspiracy, although the judge was not impartial and did not abide by the law when he allowed the confession alleged to have been obtained by torture to be considered valid. For his part, the judge of second instance, who was aware of the appeal lodged by García Villagrán, pronounced sentence on September 5, 2002, acquitted García Villagrán of the crime of conspiracy and found him guilty of crime of unlawful deprivation of liberty in the form of abduction or kidnapping and sentenced him to 38 years' imprisonment. She states that the sentence of the court of second instance was also contrary to the law because it did not examine the allegations raised during the criminal proceedings and the judges did not review the files because in less than 24 hours they confirmed the sentence of 38 years' imprisonment against García Villagrán, all of which confirms the deceit and bad faith of the government of the State of Chiapas. She states that 80% of the preliminary investigations carried out by the prosecutor's office were altered with white correction fluid and the signatures of the Public Prosecutor's office and secretaries were falsified. Therefore, she states that her husband's case has not yet been tried because the writ of amparo remains outstanding.

B. State

22. The State alleges that Mr. García Villagrán was arrested on July 6, 1997 by officers of the judicial police of the State of Chiapas because of his alleged involvement in the crimes of unlawful deprivation of liberty in the form of abduction and conspiracy, to the detriment of Saúl Chang Cueto. The Public Prosecutor's office identified circumstantial evidence supporting the allegation of García Villagrán's involvement and therefore decided to bring criminal proceedings against him. The judge found against García Villagrán and sentenced him to prison, and García Villagrán had every opportunity to provide evidence during the proceedings for which he was entitled to a defense.

23. The State says that on December 4, 1998, the judge of first instance pronounced judgment and imposed on García Villagrán a prison sentence of 40 years for crime of unlawful deprivation of liberty in the form of abduction and for the crime of conspiracy. The judgment was appealed by García Villagrán's defense and the court authorities, aware of the appeal, declared the judgment of December 4, 1998 null and lacking juridical value, and agreed to return proceedings to their original state. The State claims that once the proceedings had been revised, on September 5, 2002, the criminal judge of first instance pronounced a new judgment in favor of García Villagrán and reduced his prison sentence to 38 years for the crime of unlawful imprisonment in the form of abduction, a fine of 480 days of the minimum daily salary, and acquitted him of the crime of conspiracy.

24. The State claims that because García Villagrán disagreed with the sentence, he appealed against it on September 7, 2002 and this was heard on November 14, 2002, by the First Collegiate Regional Criminal Court in the Southern Zone, which described the judgment of September 5, 2002 as lacking in substance and juridical value. It adds that in order to challenge this finding, García Villagrán and his lawyer filed a writ of amparo 23/03 before the Fourth District Judge, who found the judgment of November 14, 2002 of the First Collegiate Regional

Criminal Court in the Southern Zone lacking in substance, and confirmed the final judgment of September 2002. The State added that, “Mr. García Villagrán subsequently appeared before federal authorities in order to file different writs of amparo, which were found to be inadmissible due to the guilty verdict for the crime of unlawful deprivation of liberty in the form of abduction.”[FN2]

[FN2] Communication from the State to the IACHR dated April 7, 2004.

25. The State alleges that García Villagrán has exhausted all instances and his guilt of the crime with which he was charged has been established. Therefore, it alleges that the present case is inadmissible because, regardless of whether the remedies brought by García Villagrán result in his favor or against, the IACHR should not act as a fourth instance and review findings of States’ domestic courts.

26. With regard to the matters of abuse and acts of torture allegedly committed by police officers when arresting García Villagrán in order to force a confession from him, the State claims that the then General Prosecutor’s Office for the State of Chiapas, launched preliminary investigations 1731/2A/2002 on May 27, 2002, against Rubén de Jesús Pérez Gallegos, Jorge Luís Camacho López, Eduardo López Levarios for the crime of abuse of authority. Once the investigation was complete, it was lodged with the judicial authorities on February 16, 2002, as criminal case number 92/2004. The Second Criminal Court in the city of Tapachula de Córdoba y Ordóñez, Chiapas, examined the case and disallowed the arrest warrant requested by the prosecuting authority. The resolution was appealed by the Public Prosecutor’s Office and the appeal judge confirmed the denial of the arrest warrant for lack of evidence.

27. The State alleges that the petitioner has not exhausted all the remedies available in domestic law because there is still an appeal or amparo pending in the proceedings relating to the abuse of authority. It also states that the petitioner reveals that not all domestic remedies have been exhausted when she says, “My husband’s case has not been tried because we still have the writ of amparo to bring.” The State therefore considers that there are still remedies in domestic law pending on the part of the petitioner.[FN3]

[FN3] Communication from the State to the IACHR dated December 27, 2004.

28. The State says that the Chiapas State Human Rights Commission launched an investigation on the basis of the complaint lodged by the wife of García Villagrán denouncing his arbitrary arrest without an arrest warrant, and the acts of torture used by the Chiapas State judicial police to make him confess to the crime of abduction. The Committee verified that a violation of the rights of García Villagrán had taken place and issued a resolution directed to the Chiapas State Attorney General so that he could launch preliminary investigations into the public servants involved in the arrest of Mr. García Villagrán. The Committee also ordered that García Villagrán should be compensated for the violation of his rights, and instructed the medical

experts attached to the Chiapas Attorney General's Office to apply the principles of the Istanbul Protocol that should be taken into account by the medical profession when investigating allegations of torture. The State says that of these recommendations, the investigation of the police officers was implemented, and so was the application of the Istanbul Protocol for investigation into torture. The compensation, however, is still pending because it has not yet been conclusively proved that either torture or an arbitrary arrest actually took place.

29. The State claims that Articles 8 and 25 of the Convention have been respected at all times because García Villagrán had access to each and every of the courts and procedural guarantees established under Mexican law for anyone involved in legal proceedings. Mr. García Villagrán had a hearing, within a reasonable time, and before a competent, independent, and impartial judge.

30. The State alleges that with regard to the detachment of García Villagrán's right retina, according to the examination carried out by doctors attached to the Social Rehabilitation Center who took part in the preliminary investigation of the crime of abduction, they state that he already suffered from that problem before committing the abduction, that is, before 1997, and that it was not a consequence of any alleged acts of torture claimed by the petitioner.

31. With regard to the lack of medical care, the State states that the medical staff at the Social Re-adaptation Center were taking the necessary steps to take him from the prison to see a specialist, and those in charge of the prison on several occasions had offered to arrange for him to leave the prison and receive medical care but that García Villagrán had repeatedly refused without explanation, and that letters by him to that effect exist.

32. The State claims that García Villagrán lodged complaints, for arbitrary arrest and acts of torture, with the Chiapas State Human Rights Commission, which issued recommendation 068/2003 that was rejected by the Chiapas Attorney General's Office. Members of his family then lodged the complaint with the National Human Rights Committee, which rejected it on the grounds that it was unfounded. It states that in file CEDH/1605/12/2003, the State Human Rights Commission lodged a petition with the Public Security Secretariat requesting the application of precautionary measures in favor of García Villagrán, who has complied with this request by periodically informing the Inspector General of the State Human Rights Commission.

33. The State claims that when García Villagrán was serving the sentence imposed by the court in Social Re-adaptation Center No. 3 in Tapachula, Chiapas, his behavior was bad. Therefore, in order to protect the safety of the prison itself, the prison authorities decided that he should be transferred to Prevention and Social Re-adaptation Center No. 15 in the city of Copainala de Mexcalapa, Chiapas. It states that all legal requirements were met in carrying out this transfer and García Villagrán's human rights were respected. The State adds that García Villagrán and his legal representatives filed various writs, 494/01, 210/02, 48/02 in order to prevent his transfer, but all the amparos were dismissed by the courts on the grounds that they were blatantly contrary to law.

34. The State claimed that in October 2005, in response to the petition lodged by García Villagrán's family, the prison authorities reconsidered and brought him back to Social Re-

adaptation Center No. 3, but his behavior continued to be bad. For this reason, the State claims, the head of the Department of Psychology of Social Re-adaptation Center No. 3 carried out a psychological study on García Villagrán, and decided that his criminal profile was highly dangerous, his behavior increasingly hostile and therefore, at the request of the Inter-disciplinary Technical Council, García Villagrán was transferred to Prevention and Social Re-adaptation Center No. 2, Puente Grande, Jalisco. This transfer, according to the State, was carried out with full respect for the rights of law, equal protection under the law, and juridical protection.

IV. ANALYSIS

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

35. Under the terms of Article 44 of the American Convention, the petitioners are empowered to lodge a petition before the Commission. The petition that is currently under examination states that the alleged victim was subject to the jurisdiction of the Mexican State at the time of the alleged events.[FN4] With regard to the State, the Commission indicates that the United Mexican States is a State party to the American Convention, having duly deposited its instrument of ratification on April 3, 1982. Consequently, the Commission has competence *ratione personae* to examine the petition.

[FN4] The arrest of Luís Rey García Villagrán took place on July 3, 1997. The acts of torture, illegal transfer from one prison to another, and acts of solitary confinement, took place subsequent to his arrest.

36. The Commission also has competence *ratione materiae* because the petition alleges violations of human rights enshrined in the American Convention and the Convention against Torture.

37. The Commission has competence *ratione temporis* to examine the complaints. The petition describes allegations concerning events that took place from July 3, 1997, the date on which Luís Rey García Villagrán was arrested when acts of torture were alleged to have taken place against him. The facts alleged took place after the entry in force of the obligations of the State party to the American Convention. Furthermore, the Commission is competent to study violations of the Convention against Torture because this had been ratified by Mexico before the date of the events.[FN5]

[FN5] The Inter-American Convention to Prevent and Punish Torture was ratified by the State of Mexico on June 22, 1987.

38. Therefore, because the petition alleges violations of human rights protected by the American Convention that took place within the territory of a State party, the Commission concludes that it has competence *ratione loci* to examine the same.

B. Requirements for Admissibility

1. Exhaustion of remedies under domestic law

39. Article 46(1) of the American Convention states that admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall require “that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.”

40. The State alleges the non-exhaustion of remedies under domestic law because in the investigation carried out by the Chiapas State Attorney General’s Office into the abuse of authority allegedly committed by public servants who took part in the arrest of García Villagrán, the petitioner resorted to a writ of appeal or amparo to continue the proceedings in the abuse of authority case. However, the State subsequently stated that the investigation was lodged with the judicial authorities who rejected the respective arrest warrant. The Public Prosecutor’s Office therefore appealed and the judge confirmed the court’s rejection of the arrest warrant because there were no grounds for it.[FN6]

[FN6] Communication from the State of Mexico, lodged with the IACHR on June 30, 2006, page 14.

41. The petitioner for her part alleges that since the hearing on July 7, 1997, in the criminal proceedings against García Villagrán, they have denounced the acts of torture, the abuse of authority, the illegal arrest of which he was the victim, but none were investigated. She alleges that the investigation carried out by the Chiapas State Attorney General’s Office into the alleged abuse of authority by Rubén Pérez Gallegos, Jorge Luís Camacho López, and Eduardo López Levarios while arresting García Villagrán is still unresolved.

42. The IACHR observes that since 1997, Mr. García Villagrán has denounced the abuse and acts of torture allegedly committed by police officers when they were arresting him in order to make him confess. On May 27, 2002, the Chiapas State Attorney General’s Office launched its initial investigation 1731/12A/2002 into Rubén de Jesús Pérez Gallegos, Jorge Luís Camacho López, Eduardo López Levarios for the crime of abuse of authority against García Villagrán, which was presented to the legal authorities on February 16, 2004, with criminal case number 92/2004. Although the Public Prosecutor’s Office applied to the judge for the release of the arrest warrant against the guilty police officers, this was rejected by the judge, causing the Public Prosecutor’s Office subsequently to appeal. The appeal judge confirmed the rejection of the arrest warrant for lack of evidence. In this sense, the IACHR considers that the appeal brought by the Public Prosecutor’s Office has exhausted the remedies under domestic law with regard to the investigation into the acts of abuse of authority.

43. In addition, the State alleges the non-exhaustion of remedies under domestic law because the petitioner's statement that "the case has not been tried because the writ of amparo remains outstanding[FN7]" indicates that there are still remedies under domestic law which the petitioner[FN8] has not exhausted. Therefore, the Commission considers that remedies under domestic law, in the criminal proceedings against García Villagrán for crime of unlawful deprivation of liberty in the form of abduction or kidnapping were exhausted by the writ of amparo 23/03 filed by the lawyer of García Villagrán, and that the judgment handed down on February 28, 2003 confirmed the final sentence of September 5, 2002, that condemned him to 38 years' imprisonment for the crime of unlawful deprivation of liberty in the form of abduction or kidnapping.

[FN7] In the communication dated May 24, 2004, lodged with the IACHR by the petitioner, she said that "my husband's case has still not been tried because we still have the writ of amparo to lodge." The petitioner was referring to the criminal proceedings against García Villagrán for the crime of unlawful deprivation of liberty in the form of abduction or kidnapping, in which all remedies under domestic law had already been exhausted and final sentence of 38 years' imprisonment handed down against García Villagrán. Therefore, there remains no further remedy to interpose. The State claimed that final judgment in this case had been reached.

[FN8] See paragraph 26 of the allegations by the State.

44. The petitioner alleges a failure on the part of the authorities of Prevention and Re-adaptation Center No. 3 to comply with the finding on the repetition of the writ of amparo No. 630/2002, by the Chiapas State Fourth District Court on February 28, 2003, that allowed the provisional suspension of the transfer of García Villagrán until such time as the constitutional guarantee case [juicio de garantías] is resolved. She also denounces the failure to comply with the resolution handed down in response to the writ of amparo 274/2004 by the Fifth District Court on February 27, 2004, ordering the immediate suspension of measures by which García Villagrán was kept in solitary confinement. In response, the State alleged that García Villagrán and his legal representatives made use of various writs of amparo, 494/01, 210/02, 48/02 in order to avoid his transfer, but all the writs were dismissed by the courts on the grounds they were flagrantly contrary to law. The State claimed that García Villagrán's transfers were carried out for reasons of prison safety, as part of his rehabilitation and approaching re-integration into society, as well as being within the legal framework regulating prison systems and administrative bodies.

45. The IACHR observes that in relation to the writs of amparo Nos. 630/2002 and 274/2004, alleged by the petitioner, the State has made no comment. Both writs were resolved in favor of García Villagrán in order to prevent his transfer to another prison, and which the prison authorities allegedly failed to honor. Therefore, in relation to these, the Commission considers that although they were the appropriate remedies and they were exhausted by the petitioner they proved ineffective in avoiding the transfer of García Villagrán to another prison or in preventing him being kept in solitary confinement. Therefore, on the basis of the foregoing, the IACHR

considers that the exception described in the second part of Article 46(2) of the American Convention is applicable.

46. The Commission repeats that invoking the exceptions to the rule of exhaustion of remedies under domestic law enshrined in Article 46(2) of the Convention is closely linked to the determination of possible violations of the rights protected, such as the right to judicial protection. However, Article 46(2) of the American Convention, in its nature and object, is autonomous in content, vis á vis the Convention's substantive norms. Therefore, a decision on whether the exceptions to the rule of exhaustion of remedies available under domestic law enshrined in the Convention can be applied to the case in question must be established prior to, and separate from, an examination of the merits of the case because it relies on a different standard of judgment than the one that determines a violation of the rights protected in Articles 8 and 25 of the Convention. It should be pointed out that the causes and effects that have prevented the exhaustion of remedies under domestic law in the present case will be examined, as far as they are relevant, in the report adopted by the Commission on the merits of the case, in order to establish whether or not they amount to violations of the American Convention.

47. Based on the foregoing, the Commission considers that there exist sufficient grounds to exonerate the petitioner from the obligation of prior exhaustion of domestic remedies as described in Article 46(2) of the American Convention.

2. Deadline for presentation of petitions

48. According to Article 46(1)(b) of the Convention, to be admissible, the petition should be lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment.

49. With regard to the criminal proceedings against García Villagrán for the crime of unlawful deprivation of liberty in the form of abduction or kidnapping, the Commission observes that the resolution of writ of amparo 23/03 which confirmed the final sentence of September 5, 2002 and which sentenced García Villagrán to 38 years' prison was February 28, 2003. The petition was lodged on June 3, 2003: within the six months allowed.

50. The Commission observes that the judgment in the appeal lodged by the Public Prosecutor's Office against the judge's refusal to allow the issue of arrest warrants for Rubén de Jesús Pérez Gallego, Jorge Luís Camacho López, Eduardo López Levarios, arising from investigation 1731/2a/2002 against them for the crime of abuse of authority was handed down after June 3, 2003, the date on which the petition was lodged with the IACHR.[FN9]

[FN9] In the communication from the Mexican State, lodged with the IACHR on April 7, 2004, it says, "Regarding the status of the relevant investigation [preliminary investigation 1731/2a/2002 against Rubén de Jesús Pérez Gallego, Jorge Luís Camacho López, Eduardo López Levarios, for the crime of abuse of authority], is pending judgment..."

51. The IACHR observes that in relation to the two writs of amparo lodged by the petitioner, although they were appropriate they were not effective in preventing either the transfer of García Villagrán to Prevention and Social Re-adaptation Center No. 15, or his solitary confinement. Therefore, the IACHR has decided to apply the exception provided in the second part of Article 46(2) of the American Convention in relation to these writs of amparo. The Commission considers that the petition under examination was lodged within a reasonable period.

3. Duplication of procedures and res judicata

52. It is not apparent from the file that the petition lodged with the Inter-American Commission is currently pending in another international proceeding for settlement, nor that it is substantially the same as one previously studied by the Commission or by another international organization, as established by Articles 46(1)(c) and 47(d) respectively.

4. Description of the alleged facts

53. The petitioner alleges that the events that are the subject of this petition amount to violations of the rights to humane treatment, personal liberty, fair trial, and judicial protection enshrined in Articles 5, 7, 8, and 25 of the Inter-American Convention on Human Rights, all in relation to the general duty contained in Article 1(1) of the same instrument to respect and protect rights. Also Articles 8 and 10 of the Inter-American Convention to Prevent and Punish Torture.

54. The Commission considers that it is not appropriate at this stage of the proceedings to establish whether or not a violation of the American Convention has occurred. For the purposes of admissibility, the IACHR must decide whether the petition states facts that tend to establish a violation, as described in Article 47(b) of the American Convention, whether the petition is “manifestly groundless,” or “obviously out of order,” as described in sub-paragraph c) of the same Article. The standard of judgment of these two extremes differs from that required to decide on the merits of a petition. The Commission must carry out a prima facie examination to establish whether or not the petition establishes the apparent or potential violation of a right protected by the Convention, not to establish the existence of a violation.[FN10]The Inter-American Court has found that “the international liability of the State is based on “acts or omissions by any of its bodies or authorities, regardless of their hierarchy, that are in violation of the American Convention.”[FN11]

[FN10] IACHR, Report N° 128/01. Case 12.367 on Mauricio Herrera Ulloa and Fernando Vargas Rohmoser (“La Nación” daily newspaper). Costa Rica, December 3, 2001, para. 50.

[FN11] I/A Court H. R., Case of the Massacre of Pueblo Bello. Judgment of January 31, 2006. Series C, No. 140, Paragraph 112, La “Masacre de Mapiripán”, supra note 7, para. 110.

55. The petitioner argues that García Villagrán was tortured allegedly by police officers in order to obtain a confession, the acts of torture were not investigated diligently by the Attorney General’s Office, and to date the police officers have still not been held liable. Furthermore, she

states that the judge in charge of the criminal proceedings allowed the confession that had been obtained under torture to be accepted as valid. The State claimed that the investigation carried out by the Chiapas State Attorney General's Office into the police officers for the crime of abuse of authority was remanded to the judge, who refused to issue the respective arrest warrants and that this decision was confirmed by the appeal judge who decided on the appeal brought by the representative of the Attorney General's Office. With regard to the criminal proceedings, the State claims that the right to due process of law was respected and García Villagrán had access to simple and effective remedies.

56. The petitioner furthermore alleges that the State failed to honor the resolutions of the two writs of amparo which found in favor of García Villagrán and protected him from arbitrary transfer from prison and from measures to keep him in solitary confinement in Prevention and Social Re-adaptation Center No. 15. The State for its part alleged that the transfers of García Villagrán to other prisons were due to reasons of discipline, security, and prison reorganization, and that no human rights were ever infringed.

57. With regard to the foregoing, the Commission has stated that " it understands that the right to effective judicial protection provided for in Article 25 is not exhausted by free access to judicial recourse. The intervening body must reach a reasoned conclusion based on the claim's merits, establishing the appropriateness or inappropriateness of the legal claim that, precisely, gives rise to the judicial recourse. Moreover, that final decision is the basis for and origin of the right to legal recourse recognized by the American Convention in Article 25, which must also be covered by indispensable individual guarantees and state obligations."[FN12]

[FN12] IACHR. No. 30/97. Case 10.08, Gustavo Carranza (Argentina). September 30, 1997, para. 71.

58. In the present case the Commission concludes that for the purposes of admissibility there are sufficient grounds to claim that the facts alleged could amount to violations of the rights to humane treatment, personal liberty, fair trial, and judicial protection enshrined in Articles 5, 7, 8, and 25 of the American Convention, all in relation to the general obligation to respect and protect rights enshrined in Article 1(1) of the same instrument. And in addition, Articles 8 and 10 of the Inter-American Convention to Prevent and Punish Torture. The IACHR considers, prima facie, that the petitioners have established the requirements defined in Article 47(b) and (c) of the American Convention.

V. CONCLUSIONS

59. The IACHR concludes that it has competence to examine this petition and that it complies with the requirements for admissibility, in accordance with Articles 46 and 47 of the American Convention, and with Articles 30 and 37 and their related provisions of its Rules of Procedure.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible in relation to alleged violations of the rights protected by Articles 5, 7, 8, and 25, of the Inter-American Convention on Human Rights, all in relation to the general duty to respect and protect rights contained in Article 1(1) of the same instrument. In addition, Articles 8 and 10 of the Inter-American Convention to Prevent and Punish Torture.
2. To give notice of this decision to the parties.
3. To continue the analysis of the merits of the case.
4. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 23rd day of the month of July, 2007.
(Signed): Florentín Meléndez, President; Paolo Carozza, First Vice-President; Víctor Abramovich, Second Vice-President; Sir Clare K. Roberts, Evelio Fernández Arévalos, and Freddy Gutiérrez Trejo, Commissioners.