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File Number(s):	Report No. 77/08; Petition 1094-03
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Title/Style of Cause:	Jose Agapito Ruano Torres v. El Salvador
Doc. Type:	Decision
Decided by:	Chairman: Paolo Carozza; First Vice-Chairwoman: Luz Patricia Mejia Guerrero; Second Vice-Chairman: Felipe Gonzalez; Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Victor E. Abramovich. Commissioner Florentin Melendez, a national of El Salvador, did not take part in the discussion or decision in the instant case, in accordance with Article 17(2) of the Commission's Rules of Procedure.
Dated:	19 October 2008
Citation:	Ruano Torres v. El Salvador, Petition 1094-03, Inter-Am. C.H.R., Report No. 77/08, OEA/Ser.L/V/II.134, doc. 5 rev. 1 (2008)
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I. SUMMARY

1. On December 12, 2003, the Inter-American Commission on Human Rights (hereinafter “the Commission”, “the Inter-American Commission” or “the IACHR”) received a petition lodged by Pedro Torres Hércules (hereinafter “the petitioner”), which claimed that the Republic of El Salvador (hereinafter “the State”, “El Salvador” or “the Salvadoran State”) bore international responsibility for alleged violation of the rights to a fair trial and judicial protection of José Agapito Ruano Torres (hereinafter “the alleged victim”).

2. The petitioner argues that the alleged victim was unfairly tried and convicted as a result of a judicial error in connection with his identity and he claims that he was tortured at the time of his arrest. With regard to admissibility requirements, he argues that domestic remedies were exhausted.

3. For its part, the State holds that there was no violation of the alleged victim’s rights to judicial protection and a fair trial, or of his right to humane treatment. It argues, furthermore, that his guilt was demonstrated in a duly supervised criminal proceeding. With respect to admissibility requirements, the State contends that the alleged victim chose not to make use of the various domestic remedies available to him and that the possibility was left pending of filing for a writ of amparo to seek relief for his allegedly abridged rights.

4. Without prejudging the merits of the matter and having examined the available information and satisfied itself that the admissibility requirements set forth in Articles 46 and 47 of the American Convention and in Articles 30 and 37 of its Rules of Procedure have been met, the IACHR concludes that the petition is admissible with regard to the alleged violation of rights recognized in Articles 5, 7, 8, and 25 of the American Convention on Human Rights (hereinafter the “American Convention” or the “Convention”), in connection with the general obligation enshrined by Article 1(1) of said international instrument. The Commission decides to notify the parties of this decision, publish it, and include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCESSING BY THE COMMISSION

5. On December 12, 2003, the Commission received the petition, which was dated November 27, 2003, and assigned it case number 1094-03. On March 31, 2004, it transmitted the pertinent portions to the State and requested it to submit its reply within two months, in accordance with Article 30(2) of the Rules of Procedure of the Inter-American Commission on Human Rights (hereinafter the “Rules of Procedure”). The reply of the State was received on May 28, 2004.

6. The IACHR also received information from the petitioner on the following dates: August 27, 2004; October 8, 2004; March 10, 2005; December 22, 2005; November 29, 2006; January 4 and 11, 2007; April 11, 2007; September 27, 2007; November 1, 2007, and March 25, 2008. Those communications were duly forwarded to the State.

7. In addition, the IACHR received comments from the State on the following dates: February 10, 2005; February 6, 2007; August 2, 2007; January 8, 2008, and June 11, 2008. Those communications were duly conveyed to the petitioner.

III. POSITIONS OF THE PARTIES

A. The petitioner

8. The petitioner holds that José Agapito Ruano Torres was unfairly tried and convicted for the kidnapping of the owner of a bus company on August 22, 2001. He says that the conviction handed down by the Second Trial Court in and for San Salvador was the result of a gross judicial error over his identity, which error was compounded by multiple violations of the rights to a fair trial and to mount a defense.

9. In that connection, the petitioner holds that the facts described in the petition began when one of the perpetrators of the aforesaid kidnapping was captured and, in a preliminary statement made at the prosecutor's office, confessed to his participation and that of other persons in the crime, saying that one of his associates had been an individual whom he knew only as “Chopo”. The petitioner claims that on the basis of the foregoing, the National Civil Police investigators had made inquiries and mistakenly concluded that the nickname belonged to José Agapito Ruano Torres, when in fact, according to the petitioner, it belonged to one of his brothers. The petitioner charges that subsequently the investigators persuaded the man who confessed to give another

statement, this time of a judicial nature, in order to benefit from a plea bargain agreement, in which he identified the suspect “Chopo” as José Agapito Ruano Torres, who was 24 years old at the time of the events. The petitioner says that the entire criminal case rested on that statement.

10. The petitioner notes in the wake of the foregoing, on October 17, 2000, José Agapito Ruano Torres was captured at his residence by order of the prosecutor's office. He claims that at the time of his arrest, the alleged victim was subjected to torture and cruel, inhuman and degrading treatment by the police because he refused to confess to the acts that were attributed to him. He says that on October 20, 2000, the Justice of the Peace in and for Tonacatepeque ordered that the provisional detention order on the alleged victim be maintained.

11. The petitioner says that the team of public defenders assigned to Mr. José Agapito Ruano Torres, who acted jointly to represent him and other persons accused in the trial, failed to denounce irregularities committed during the investigation. In that respect, he says that in the line-up to identify the perpetrators, the prosecutor allegedly told the victim of the kidnapping to identify José Agapito Ruano Torres as the perpetrator and that the names written down in the record of the lineup did not match the persons who actually took part in the process,[FN2] in spite of which the public defender reportedly did not present any motion on his behalf. The petitioner notes that on December 7, 2000, in view of the flaws in his defense, the alleged victim filed for a writ of habeas corpus, which was resolved by the Constitutional Chamber of the Supreme Court of Justice on August 7, 2001, which decided that he should remain in custody. The petitioner adds that at the preliminary hearing on April 26, 2001, the Judge apparently rejected various requests made by Mr. Ruano Torres' defense and adopted decisions to his detriment, in spite of which the defense reportedly again acted negligently, filing only motions for annulment but not a “supplementary appeal,” which allowed to the decisions to become final.

[FN2] In this connection, the petitioner cites and attaches as an annex the resolution of the Office of the Human Rights Ombudsman, which takes as attested that Mr. Ruano Torres was pointed out by the prosecutor so that the victim might identify him, and that the names that appear in the relevant record do not correspond to those of the prisoners who took part in the line-up. See Office of the Human Rights Ombudsman, Case. 01-1554 Ac. 01-0214-01, June 9, 2003.

12. The petitioner says that as a result of the above, the alleged victim sought to protect his own rights by attempting various remedies in order to clear up the error that had been committed, but it seems he was not permitted to do so. In that connection, he is said to have submitted a brief to the Court on June 18, 2001, requesting an investigation of the inquiry performed by the National Civil Police; asking that investigators be sent to his zone of residence to verify that the nickname of “Chopo” did not belong to him; and mentioning that they could consult the municipal mayor in that regard. Those requests were reportedly denied because the investigation phase had concluded and that “his defense should have entered those requests at the appropriate time.”[FN3]

[FN3] The petitioner cites and attaches as an annex the Resolution of the Second Trial Court in and for San Salvador, June 22, 2001.

13. The petitioner also says that on September 5, 2001, the alleged victim submitted another brief to the Court in which he mentioned the faults in the defense team that had been assigned to him, and alleged that his defender had ordered him not to present a preliminary statement, and that he had only managed to harm his interests in each of the procedural acts in which he had taken part. He also alleged that fraud had been committed in the line-up and that he had told his defender and the judge that a relative had precise information about the person known as "Chopo"; however, both had refused to receive the information. In the same communication, he said that he had sought previously to present a brief to the office of the prosecutor indicating that the person who answered to the aforesaid alias was prepared to come forward and give a statement, but that too was rejected. The Court, in a decision of September 17, 2001, had purportedly merely ruled in this regard that, "as to the witness testimony offered [...] this Court considers that a decision will be made as to whether to admit said evidence at an appropriate time in the proceedings." [FN4]

[FN4] The petitioner cites and attaches as an annex the Resolution del Second Trial Court in and for San Salvador, September 17, 2001.

14. The petitioner also says that on September 13, 2001, in view of the above-alleged inaction and negligence of the defense, José Agapito Ruano Torres decided to appoint his own defense counsel, who moved that the public hearing be suspended to enable him to study the case, which motion was denied. The alleged victim revoked the aforesaid defense counsel's power of attorney due to his lack of familiarity with the case.

15. The petitioner adds that on September 27, 2001, Roberto Ruano Torres (brother of José Agapito) and two other individuals presented a brief to the Court indicating that a brother of the alleged victim named Rodolfo was known by the nickname of "Chopo", and that "if what the case says is true, the person who should know anything is the brother who goes by that ALIAS." [FN5] The petitioner also attaches an official communication dated September 21, 2001, [FN6] in which the Mayor of Guazapa attests to the good name of José Agapito Ruano Torres and says that the nickname of "Chopo" in reality belongs to his brother "who is called Rodolfo Ruano Torres; and that is the person whom the PNC went to find and that owing to a misunderstanding, young José Agapito was arrested."

[FN5] The petitioner attaches a brief signed by Roberto Ruano Torres and two other persons, dated September 27, 2001.

[FN6] The petitioner attaches the aforesaid official communication signed by the Mayor of the Department of San Salvador. See: Written communication signed by the Mayor of the Department of San Salvador, September 21, 2001.

16. The petitioner notes that the public hearing was held on October 5, 2001, before the Second Trial Court. He says that in the course of the hearing, Rodolfo Ruano Torres (José Agapito's brother) sought to testify but the Court refused him. He adds that the victim of the kidnapping had again identified José Agapito Ruano Torres as one of the perpetrators of the crime but that was due to the public exposure that the accused had received beforehand, and that the kidnap victim said during his testimony that his recognition and identification were based on images that he had seen published in the media. The petitioner says that José Agapito was defended at the public hearing by the public defender, who did not lodge any motions on his behalf during a hearing or appeal the conviction that was handed down that same day. He says that in view of the foregoing, the alleged victim on his own behalf filed motions to review the conviction with the Second Trial Court in and for San Salvador on August 1, 2003 and September 22, 2003, in which he offered to present his brother, Rodolfo, as a witness. The two motions were ruled inadmissible on August 13 and September 29, 2003, respectively. The Court found with respect to the first motion that the convicted man's constitutional guarantees had not been violated and that the second motion was a reiteration of the first.

17. The petitioner also informed that the above-alleged situation was brought to the attention of the Department of Investigation of Professional Conduct of the Supreme Court Justice; the Disciplinary Inquiry Unit of the National Civil Police; the Office of the Human Rights Ombudsman, and the Human Rights Commission of El Salvador.[FN7] The petitioner attaches the report issued by the Office of the Ombudsman, which says, "since there is no record in the extrajudicial investigation of a procedure carried out to ascertain that the nickname of "Chopo" belongs to José Agapito Ruano Torres, a situation of legal insecurity created; that is, no certainty exists as to how the investigators identified the accused." The report adds that "the fact that the accused underwent a line-up after having been displayed to the media tainted or contaminated the evidence." The report adds that the right to a fair trial of José Agapito Ruano Torres and the other accused persons was violated, and that in the case of José Agapito Ruano Torres there was also judicial error. The report recommended to the Public Defender's Office of the Attorney General's Office that it seek a review of José Agapito Ruano Torres's conviction "bearing in mind the irregularities in the process, jointly endorsed by omission of the various participants in the proceedings (judges, prosecution, public defenders, and private parties)."[FN8]

[FN7] The petitioner encloses a document from the Human Rights Commission, which contains a record of the testimony of Rodolfo Ruano Torres, in which he identifies himself as "Chopo" and testifies to his participation in the events under investigation. See Document of the Human Rights Commission of El Salvador, dated April 4, 2002.

[FN8] The petitioner summarizes various passages from the resolution of the Office of the Human Rights Ombudsman, and attaches the document as an annex. See Office of the Human Rights Ombudsman, Case 01-1554 Ac. 01-0214-01, June 9, 2003.

18. Based on the foregoing, the petitioner concludes that the way in which the criminal trial against the alleged victim was prosecuted "violated the presumption of innocence since the

evidence considered in convicting José Agapito Ruano Torres was not sufficiently precise or consistent to prove beyond reasonable doubt the link that must exist between the perpetrator of the criminal wrongdoing and the crime,” which shows that the “case was approached with prejudice and the presumption that the accused was guilty.” The petitioner says that José Agapito Ruano Torres filed disciplinary complaints against the judges and the police agents but to no avail.

19. In his communication of December 14, 2006, by which time the Commission had begun to process the petition, the petitioner informed the IACHR that he had filed another motion to review in 2006, which was rejected by the Second Trial Court in and for San Salvador on the grounds that Mr. Ruano Torres’ complaint –to the effect that he had been prevented from making a statement– was baseless, and that the evidence that the that same court had in due course weighed demonstrated the guilt of the convicted man.

20. As to admissibility requirements, the petitioner argues that domestic remedies were exhausted and that if remedies existed that were not attempted it was precisely because of the undefended state in which the alleged victim found himself as a result of the negligence and technical failings of the defender who was assigned to him. The petitioner argues that remedies exist that only a defense attorney may pursue, such as a motion for annulment or a supplementary appeal, which, he says, the defense counsel had negligently failed to invoke. Finally, as regards the argument of the State concerning failure to file for a writ of amparo, the petitioner notes that it is out of order because the suitable remedy provided by domestic law to stop an illegal detention is habeas corpus, which the alleged victim exhausted.

B. The State

21. The State holds that the proceeding against Mr. Ruano Torres was initiated based on testimony received in the preliminary investigation from one of the accomplices in the kidnapping, who was granted a plea bargain in keeping with domestic criminal procedural law, based on which the prosecutor assigned to the case ordered the location and identification of the individuals mentioned in said testimony.[FN9] The State adds that the judicial decisions were “legally founded since the set judicial procedure and procedural stages were followed.”

[FN9] In relation to the foregoing, the State mentioned in its first communication that the steps to identify the suspect “Chopo” had begun based on the testimony obtained in the preliminary investigation from Mr. Amaya Villalta, whereas in a later communication it said that those procedures had been carried out based on an extra judicial statement taken on October 9, 2000. See communications of the State of May 28, 2004, and February 10, 2005, respectively.

22. The State holds that “to establish Mr. Ruano’s participation, first consideration was given to the aforesaid preliminary investigation evidence, in addition to the enquiries that were conducted to confirm that the person mentioned by the aforesaid witness in his statement really was Mr. Ruano Torres, and subsequently a line-up was held in which the victim identified José Agapito as one of the participants in his kidnapping; two factors that carried great legal weight in

determining Mr. Ruano's participation." The State adds that there is no record in the proceeding that either the petitioner or José Agapito Ruano Torres requested an inquiry into the police procedures by which it was concluded that the nickname "Chopo" belonged to the latter.

23. The State holds that what the petitioner says with regard to the alleged pointing out of José Agapito Ruano Torres during the line-up was untrue. In that connection, the State says that it is noted in the record that the victim identified José Agapito Ruano Torres and that in such procedures the accused is behind a glass through which he cannot see and, therefore, Mr Ruano could not have seen the prosecutor allegedly tell the victim to point to him." The State also mentions that present at the line-up were the Judge in and for Tonacatepeque, her clerk, the prosecutors, Public Defender Mario René Chávez Contreras, and the victim, Jaime Ernesto Rodríguez Marroquín, and that if the theory sustained by the petitioner were true, the defender would have requested the annulment of the procedure.

24. In reference to the physical mistreatment that the petitioner allegedly suffered in the course of his arrest, the State says that -according to the record of the procedure carried out-when National Civil Police agents under the supervision of the prosecutor entered the house of José Agapito Ruano Torres, the latter resisted and, therefore, the agents were compelled to use a level of force commensurate with the opposition put up by the detainee. The State also says that the medical evaluation performed did not note the supposed mistreatment that the petitioner alleges.

25. The State also refers to the refusal of the motion to review presented by the petitioner, saying that it was declared inadmissible because the facts that supported his guilt were considered compelling. Furthermore, the State notes that the findings of the investigations requested by the alleged victims into the judges who were involved in the case showed, in the opinion of the Department of Investigation of Professional Conduct of the Supreme Court of Justice, that the allegations against the aforesaid officials "offered no evidence of probable cause to open a disciplinary inquiry." The State says that the investigation of the police agents produced the same results and it was determined, therefore, that no violations had been committed against Mr. Ruano Torres.

26. The State also alludes to the habeas corpus petition presented by the alleged victim and says that the unfavourable ruling of the Constitutional Chamber of August 7, 2001, was based on the fact that in the course of the investigation evidence had been found of his participation in the commission of the crime and that said ruling also responded to each of the violations alleged by the petitioner. The State mentions that in the decision on the aforesaid petition the following was determined: that, contrary to the allegations, the judicial decisions by which the accused was remanded in pre-trial detention were not unwarranted; that the capture of José Agapito Ruano Torres had been carried out after both he and the other accused persons had been identified; and that his physical integrity had not been violated inasmuch as the force used by the agents had been necessary and proportional in view of the resistance of the captured man.

27. Specifically with respect to admissibility requirements, the State mentions that there were various domestic remedies available to the accused, and yet he did not invoke them. In that connection, the State says that although the petitioner claims a series of alleged violations in the

course of the proceeding, at no time did he take any steps to seek relief in that legal context, “rather, all he did was complain and denounce the judges and magistrates, without making use of the mechanisms available to him within that proceeding.” By the same token, the State mentioned that in addition to a motion for annulment, the petitioner had the opportunity to file an ordinary appeal and a cassation appeal; “however, he opted to abandon the standard procedure, which was at his disposal as the suitable jurisdiction.”

28. Furthermore, in response to the argument of the petitioner regarding the alleged flaws with which the public defenders that represented him acted, the State holds “although the public defenders invoked no further remedies, that was because they had lodged two motions for annulment... and this was due, not to negligence, but to the fact that in the opinion of the defense, based on a responsible and painstaking examination, the foregoing was not in order because the parties must comply with the requirements for invoking a judicial remedy set forth by the law and governed by the Procedural Code and the case-law of the courts [.]”

29. The State also says that there are a number of legal actions still open to the petitioner given that through an action for amparo he could seek relief for the rights he believes violated, such as the rights to a fair trial and judicial protection, “that is, amparo may be invoked for violation of rights set forth in the Convention but not to seek relief against the final judgment in a criminal matter since it would be out of order in that respect, as stipulated in Article 13 of the Code of Constitutional Procedure [.]”

30. Because the petitioner’s last motion to review was filed after proceedings before the IACHR begun, and said motion is still pending a resolution, the State argued that an objection to the previous exhaustion of domestic remedies was applicable.

IV. ANALYSIS

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

31. The petitioner has standing under Article 44 of the American Convention to lodge petitions with the Commission. The alleged victim is a person on whose behalf El Salvador undertook to observe and ensure the rights recognized in the Convention. Accordingly, the IACHR is competent *ratione personae* to take up this petition.

32. The Commission is competent *ratione loci* to consider the petition inasmuch as it alleges violation of rights protected by the American Convention which are said to have taken place within the territory of El Salvador, a state party to said treaty.

33. The IACHR is competent *ratione temporis* because the obligation to observe and ensure the rights protected in the American Convention was already binding upon the State at the time the events alleged in the petition are said to have occurred, given that El Salvador deposited its instrument of ratification in the appropriate manner on June 23, 1978. Finally, the Commission has *ratione materiae* competence because the petition alleges violations of human rights protected in the American Convention.

B. Other admissibility requirements for the petition

1. Exhaustion of domestic remedies

34. Article 46(1)(a) of the American Convention provides that admission of petitions lodged with the Inter-American Commission in keeping with Article 44 of the Convention shall be subject to the requirement that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law. This rule is designed to allow national authorities to examine alleged violations of protected rights and, as appropriate, to resolve them before they are taken up in an international proceeding.

35. In the instant case, the State argues that the alleged victim chose not to make use of the various domestic remedies available to him and that the possibility was left pending of filing for a writ of amparo to seek relief for his allegedly abridged rights. In particular, it says that although the alleged victim claimed a series of supposed violations in the course of the proceeding, he did not invoke domestic remedies but, rather “all he did was complain and denounce the judges and magistrates, without making use of the mechanisms available to him within that proceeding.” The State also mentions that in addition to a motion for annulment, the he could have filed an ordinary appeal and a cassation appeal. However, the alleged victim “opted to abandon standard procedure, which was at his disposal as the suitable jurisdiction.”

36. In this connection, the petitioner argues that domestic remedies were exhausted. In relation to the argument of the State that an action for amparo has yet to be attempted, the petitioner claims that the alleged victim filed for a writ of habeas corpus at the appropriate juncture in the proceeding, which was the specific remedy to resolve the violations alleged. Furthermore, with respect to the assertion that the alleged victim had failed to pursue standard remedies, the petitioner holds that this was due to the negligence of the public defender provided by the State, as a result of which José Agapito Ruano Torres himself invoked a series of remedies which he considered pertinent, including a complaint denouncing his defender for negligence, a request for his replacement, and motions for review of judgment.

37. In the instant case, the petitioner claims a series of irregularities in the trial of the alleged victim that ultimately led to a conviction, which, according to the petitioner, was founded on a judicial error. Based on the arguments advanced by the parties and the information in the record,[FN10] the Commission offers the following observations in this respect:

[FN10] In the present case, the petitioner provided various motions related to Criminal Case File 77-2001-2 in the Second Trial Court in and for San Salvador. Similarly, the State provided a copy of the complete file of Case 77-2001-2 and of the habeas corpus proceedings within the Constitutional Chamber of the Supreme Court of Justice, ref. 375-2000, 403-2000 compiled and requested on behalf of José León Pérez, José Orellana Pérez and José Agapito Ruano Torres.

1. Accusations of physical, mental, and moral mistreatment at the time of the alleged victim's arrest

38. The record shows that on December 7, 2000, José Agapito Ruano Torres filed a habeas corpus petition on his own behalf in which he charged that at the time of his arrest he had been subjected to physical, psychological, and moral mistreatment by the police. On August 7, 2001,[FN11] the Constitutional Chamber rejected the petition with the argument that while force had been used it had not infringed José Agapito Ruano Torres's human rights since -according to the relevant police record- it had been necessary to neutralize Mr. Ruano Torres' resistance to his arrest.

[FN11] See Ruling of the Constitutional Chamber of the Supreme Court of Justice, San Salvador, August 7, 2001. There is no record of the date on which José Agapito Ruano Torres or his defense counsel were notified of the decision.

39. The record further shows that on October 30, 2000,[FN12] the petitioner filed a complaint with the Disciplinary Inquiry Unit of the National Civil Police in which he alleged abuse and mistreatment committed against José Agapito Ruano Torres at the time of his arrest. On April 18, 2001,[FN13] the prosecutor assigned to that administrative inquiry requested the judge hearing the criminal case to authorize the transfer of José Agapito Ruano Torres to the medical examiner's office in San Salvador on April 20, 2001, for a psychological evaluation to be performed on him. On April 19, 2001, the judge presiding over the case found the request to be out of order and warned the prosecutor "that henceforth any procedure of that nature be requested with at least six days notice in order for this Court to take the appropriate steps." [FN14] Furthermore, at the preliminary hearing before the Court of First Instance in and for Tonacatepeque, upon being allowed to speak, Mr. José Agapito Ruano Torres said that "[...] the [police] made threats against his life, dragged him on the ground, and that was how they implicated him in the crime [...]." [FN15] In addition, the resolution of the Office of the Human Rights Ombudsman,[FN16] which also sets out for the record the complaint of torture and that the alleged victim made to that body, is also included in the criminal proceeding.

[FN12] See brief of April 18, 2001, p. 420, criminal case 77-2001-2.

[FN13] See brief of April 18, 2001, p. 420, criminal case 77-2001-2.

[FN14] See brief of April 18, 2001, p. 422, criminal case 77-2001-2.

[FN15] See Court of First Instance in and for Tonacatepeque, Preliminary Hearing, April 27, 2001.

[FN16] See Office of the Human Rights Ombudsman, Case 01-1554 Ac. 01-0214-01, June 9, 2003.

2. Pre-trial detention

40. With respect to pre-trial detention, the Commission notes that Mr. José Agapito Ruano Torres' capture and arrest was ordered by the prosecutors assigned to the case and subsequently confirmed judicially by the Justice of the Peace in and for Tonacatepeque on October 20, 2000; the Court of First Instance in and for Tonacatepeque on April 27, 2001; and the Second Trial Court on June 22, 2001. The ruling of the Constitutional Chamber of the Supreme Court of Justice of August 7, 2001, decided likewise in rejecting the habeas corpus petition filed.

3. Alleged violations of the rights to a fair trial and judicial protection

41. With respect to the arguments concerning alleged violations of the rights to a fair trial and judicial protection, the Commission notes that following his capture on October 17, 2000, José Agapito Ruano Torres, in the course of his criminal trial and in view of the alleged flaws in his defense, filed on his own behalf a series of briefs and motions in which he denounced multiple procedural irregularities,[FN17] requested procedures, and offered evidence to demonstrate to various authorities that a judicial error had been committed in ascribing to him an identity that was not his, since the person identified as "Chopo" was someone else.[FN18]

[FN17] The briefs were submitted by José Agapito Ruano Torres and/or Pedro Torres Hércules, builder, relative of the alleged victim and petitioner in the instant case.

[FN18] - In the framework of his criminal trial, he requested: a) On June 18, 2001, that his provisional detention be reviewed and that "the act of identification and location, as well as all the other acts that arose therefrom" be declared null and void; he requested that he be granted a special hearing for review of measures, the opportunity to make a preliminary statement at a special hearing, and his liberty. The Court denied the aforesaid motions because it considered that the investigation phase had concluded and that "his defense should have made those requests at the appropriate time." b) on September 5, 2001, he submitted a brief in which he alleged that his defender had ordered him not to present a preliminary statement and that he had harmed his interests in each of his interventions; he alleged irregularities and fraud in the line-up to which he had been submitted and said that a relative of his had offered his defense counsel precise information about the person known as "Chopo", in spite of which, the defense counsel and, later, the judge had refused to receive the information offered. He also requested that Pedro Torres Hércules be admitted as a witness in the public hearing. In the same brief he mentioned that he had attempted previously to submit a brief to the Office of the Prosecutor, in which he had indicated that the person who answered to the aforementioned alias was willing to come forward and testify. However, the brief was refused. On September 17, 2001, the Court ruled that, with regard to "the witness testimony offered by both of the accused, this Court considers that a decision will be made as to whether to admit said evidence at an appropriate time in the proceedings." See Second Trial Court in and for San Salvador, criminal case 77-2001-2.

- In the framework of the habeas corpus petition presented by the alleged victim on his own behalf, he submitted briefs on January 3 and February 19, 2001, in which he alleged various counts of negligence and irregularities on the part of his defense counsel, the prosecution, and the tribunal, and requested that investigators be dispatched to ascertain the real identity of "Chopo". On March 14, 2001, he presented a brief to the President of the Supreme Court of Justice in which he claimed procedural irregularities in connection with the lineup, the testimony of the witness who incriminated him, and the acts of torture committed at the time of his arrest.

On June 8, 2001, he submitted an extended habeas corpus petition to the Constitutional Chamber of the Supreme Court of Justice. On August 7, 2001, the Constitutional Chamber ruled that José Agapito Ruano Torres and two other accused should remain in custody. See Constitutional Chamber of the Supreme Court of Justice, San Salvador, August 7, 2001.

- Also on record is the complaint of March 1, 2001, to the Legal Audit Department of the Prosecutor General's Office against the prosecutors assigned to the case, in addition to a complaint against the judges of the Second Trial Court in and for Tonacatepeque to the Judicial Investigation Department of the Supreme Court of Justice.

- The record also shows that on October 15, 2001, the alleged victim presented another communication to the Office of the Human Rights Ombudsman, in which he stated that the person known as "Chopo" was his brother; again complained of the irregularities in the defense and the proceeding; requested an investigation of his case, and that a motion for review be arranged.

42. On October 5, 2001, the Second Trial Court in and for San Salvador handed down a conviction against José Agapito Ruano Torres. The Commission notes that the team of public defenders did not file an ordinary appeal or a cassation appeal against the conviction.

43. On August 1, 2003, the alleged victim, on his own behalf and acting without legal counsel, filed a motion to review with the Second Trial Court in and for San Salvador,[FN19] offering to present his brother, Rodolfo, as a witness.[FN20] On August 13, 2003, the Court declared the motion inadmissible, finding that the convicted man's claim that he had been denied the possibility of making a statement was false and, therefore, no constitutional guarantee had been infringed.[FN21]

[FN19] Article 431 of the Code of Criminal Procedure of El Salvador provides as follows: A review of a final conviction shall be admissible at all times and only in favor of the accused, in the following cases: 1) When the facts on which the judgment is based are incompatible with those established in the judgment or by another final criminal judgment; 2) When the challenged judgment has been founded on documentary evidence or testimony whose falsehood has been declared in a subsequent final ruling; 3) When the judgment has been delivered as a consequence of malfeasance, bribery, violence, or in an otherwise fraudulent manner, the existence of which has been declared in a subsequent final ruling; 4) When the judgment directly and patently violates a constitutional guarantee; 5) When new facts or evidence come to light after the judgment that on their own or in conjunction with those already examined in the proceeding, show that the act did not exist, that the accused did not commit it, or that the act committed is not punishable; and, 6) When a more favorable criminal law is applicable.

[FN20] The procedural standard in force provided that "Trial judges shall also examine motions for review on the rulings that they deliver". See Code of Criminal Procedure of El Salvador, Article 53.

[FN21] The Court found that it had not been shown that the provisions contained in Article 431(4) had been met. See Second Trial Court in and for San Salvador, August 3, 2003.

44. On September 22, 2003, José Agapito Ruano Torres filed another motion to review with the Second Trial Court in and for San Salvador in which he advanced the same arguments and again offered the testimony of his brother, Rodolfo. On September 29, 2003, the Court decided not to admit the new motion on the basis that it was a reiteration of the previous one.[FN22]

[FN22] See Second Trial Court in and for San Salvador, September 29, 2003.

45. With respect to the State's argument that domestic remedies have not been exhausted because an action for amparo has not been presented, the Commission notes that the State itself holds that said remedy is not appropriate to challenge a final judgment.

46. Based on the foregoing, the Commission finds that the matters of the allegations of torture and cruel, inhuman or degrading treatment allegedly committed to the detriment of José Agapito Ruano Torres at the time of his arrest, as well as those to do with his pre-trial detention and his allegations of violations of the rights to a fair trial and judicial protection, were examined in his criminal trial. Accordingly, the disposal of the motions for review presented exhausted the domestic jurisdiction in respect of each of said claims. Furthermore, those motions were also the subject of the habeas corpus action that was lodged.

47. Based on the foregoing, the Commission concludes that the instant petition meets the requirements set forth at Article 46(1)(a) of the American Convention.

2. Filing period

48. Under the terms of Article 46(1)(b) of the Convention, for a petition to be admitted it must have been lodged within a period of six months following the date on which the complainant was notified of the final judgment at the national level. The six-month rule guarantees certainty and legal stability once a decision has been made.

49. The Commission found that in the instant case, the disposal of the motions for review presented exhausted the domestic jurisdiction. The petition was presented to the Commission on December 12, 2003, and, therefore, any of the three appeal decisions is within the filing period provided at Article 46(1)(b) of the Convention, on which basis the IACHR deems this requirement met.

3. Duplication of international proceedings and res judicata

50. Article 46(1)(c) provides that admission of a petition is subject to the requirement that the subject "is not pending in another international proceeding for settlement," and Article 47(d) of the Convention stipulates that the Commission shall not admit a petition which "is substantially the same as one previously studied by" it "or by another international organization." In the present case, the parties have not claimed and the proceedings do not indicate the existence of either of these circumstances of inadmissibility.

4. Colorable claim

51. As regards the analysis of admissibility, the Commission considers that it is not appropriate for it at this stage of the proceedings to determine whether or not the alleged violations of the right to a fair trial and to be free from the application of ex post facto laws did indeed occur. For the purposes of admissibility, the IACHR at this time must only decide, pursuant to Article 47(b) of the American Convention, whether facts have been put forward that, should they be proven, would constitute violations of same, and, pursuant to paragraph c of the same article, whether the petition is “manifestly groundless” or “obviously out of order.”

52. The standard by which to assess these extremes is different from the one needed to decide the merits of a petition. The IACHR must perform a summary prima facie evaluation and determine if the complaint provides grounds for an apparent or potential violation of a right guaranteed by the American Convention, although not whether the violation has in fact occurred.[FN23] At the present stage what is appropriate is to make a concise analysis that does not entail a prejudgment or the advance of an opinion on the merits. The Inter-American Commission’s Rules of Procedure, in establishing one stage for admissibility and another one for merits, reflects this distinction between the evaluation that the Inter-American Commission must carry out to declare a petition admissible, and the one required to establish whether a violation imputable to the State has been committed.[FN24]

[FN23] See IACHR, Report 128/01, Case 12.367, Herrera and Vargas (La Nación), Costa Rica, December 3, 2001, para. 50; Report 4/04, Petition 12.324, Rubén Luis Godoy, Argentina, February 24, 2004, para. 43; Report 32/07, Petition 429-05, Juan Patricio Marileo Saravia et al., Chile, April 23 2007, para. 54.

[FN24] See IACHR, Report 31/03, Case 12.195, Mario Alberto Jara Oñate et al., Chile, March 7, 2003, para. 41; Report 4/04, Petition 12.324, Rubén Luis Godoy, Argentina, February 24, 2004, para. 43; Petition 429-05, Juan Patricio Marileo Saravia et al., Chile, April 23, 2007, para. 54; Petition 581-05, Víctor Manuel Ancalaf Llaupe, Chile, May 2, 2007, para. 46.

53. The Commission finds that there is nothing in this case to suggest that the petition is unfounded or out of order. Furthermore, it notes that, prima facie, the petition tends to characterize violations of the rights to a fair trial and judicial protection enshrined at Articles 8 and 25 of the American Convention, in view of the petitioners allegations regarding the alleged defenselessness of José Agapito Ruano Torres because of the reportedly negligent conduct of the public defenders, in addition to the claims concerning the lack of an adequate response from the courts of justice to reiterated requests from the alleged victim for procedures designed to resolve the error of identity that he averred and the alleged deficiencies in the identification procedures, among others issues.

54. The Commission also notes that the complaints of torture allegedly committed at the time of the alleged victim’s arrest and the allegations of illegal detention were examined in the framework of proceedings in which the alleged victim was reportedly defenseless and irregularities were supposedly committed. Accordingly, if shown to be true, the allegations of

torture and illegal detention could constitute an alleged violation of Articles 5 and 7 of the Convention.

55. Based on the foregoing, the Commission will analyze in the stage on merits if a possible violation exists of Articles 5, 7, 8, and 25 of the American Convention, in connection with Article 1(1) thereof, to the detriment of José Agapito Ruano Torres. Accordingly, the Commission finds that the requirements set forth in Article 47(c) of the American Convention have been met.

V. CONCLUSIONS

56. The Commission concludes that this petition is admissible and, therefore, it is competent to take up the complaint lodged by the petitioner with regard to alleged violation of Articles 5, 7, 8, and 25 of the American Convention, in conjunction with Article 1(1) of the said instrument.

57. Based on the factual and legal arguments given above and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant petition admissible with regard to Articles 5, 7, 8, and 25 of the American Convention, in conjunction with Article 1(1) thereof.
2. To notify the State and the petitioner of this decision.
3. To begin its analysis of merits in the matter.
4. To publish this report and include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C., on the 19th day of October, 2008. (Signed): Paolo G. Carozza, Chairman; Luz Patricia Mejía Guerrero, First Vice Chairwoman; Felipe González, Second Vice Chairman; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, and Víctor E. Abramovich, members of the Commission.