

**REPORT No. 72/10<sup>1</sup>**  
PETITION 161-01  
ADMISSIBILITY  
IRINEO MARTÍNEZ TORRES AND CANDELARIO MARTÍNEZ DAMIÁN  
MEXICO  
July 12, 2010

**I. SUMMARY**

1. On March 13, 2001, the Inter-American Commission on Human Rights (hereinafter, the “Inter-American Commission,” the “Commission,” or “the IACHR”) received a petition lodged by Alfonso Otero and Mónica Schurtman (hereinafter, “the petitioners”) against the State of Mexico (hereinafter, “the State” or “the Mexican State”). The petitioners argue that the State is internationally responsible for the alleged assault and violation of the fair trial guarantees of Irineo Martínez Torres and Candelario Martínez Damián, both members of the Purépecha indigenous people (hereinafter “the alleged victims”), committed during their arrest and the criminal proceeding instituted against them.

2. The petitioners argue that the alleged victims’ rights recognized in Articles 1 (obligation to respect rights), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) were violated. The petitioners say that the foregoing is based on the fact that they were reputedly physically assaulted by judicial police at the time of their arrest; they were not appointed an interpreter during the criminal proceeding against them; and the public defender failed to act in an efficient manner. As regards admissibility, they argue that domestic remedies have been exhausted and that the petition was lodged within the time limit set out in the American Convention.

3. For its part, the State holds that the petition is inadmissible because the facts described in the petition do not tend to establish violations of rights protected in the American Convention. As regards the admissibility requirements to be met by the petition, the State holds that the remedies under domestic law have not been appropriately exhausted because: i) the supposed violations of rights protected in the American Convention have not been invoked before the domestic courts and, ii) there are judicial remedies that the alleged victims should have sought and exhausted. The State further asserts that the petition was not lodged with the IACHR within the time limit required under the American Convention.

4. Having examined the positions of the parties and compliance with the requirements provided in Articles 46 and 47 of the American Convention, and without prejudging the merits of the complaint, the Commission decided to declare the petition admissible for the purposes of examination of the alleged violations of Articles 5, 7, 8 and 25 of the American Convention in connection with Article 1 of said treaty. Furthermore, taking into consideration *iura novit curia principle*, the Commission decided to declare the petition admissible with respect to the alleged violation of the right recognized in Article 24 of the American Convention and in the merits stage will analyze the potential applicability of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture (hereinafter, “Convention against Torture”). The Commission decided, moreover, to notify the parties of this decision, publish it, and include it in its Annual Report to the OAS General Assembly.

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<sup>1</sup> Commissioner José de Jesús Orozco Henríquez, a Mexican national, did not participate in the discussion or decision of the present case, in accordance with Article 17.2.a of the Rules of Procedure of the IACHR.

## II. PROCEEDINGS BEFORE THE IACHR

5. The petition was received by the Commission on March 13, 2001 and assigned it number 161-01.<sup>2</sup> In response to a request from the IACHR the petitioners submitted additional information on April 25 of that year. On October 5, 2001, the Commission forwarded the relevant parts of the information received to the State and requested it to present its comments within two months. Mexico's response was received on February 14, 2002.

6. The IACHR also received information from the petitioners on the following dates: October 17, 2001, December 30, 2002, and April 26, 2004. Those communications were duly forwarded to the State.

7. In addition, the IACHR received observations from the State on February 13, 2004 and June 21, 2007. Those communications were duly forwarded to the petitioners.

## III. POSITIONS OF THE PARTIES

### A. The petitioners

8. The petitioners claim that Messrs. Irineo Martínez Torres and Candelario Martínez Damián were victims of violations of rights protected in the American Convention in the course of their arrest and by reason of failures in observance of fair trial guarantees in the criminal proceeding brought against them. The petitioners argue in this regard that the alleged victims were physically assaulted by judicial police at the time of their arrest; they were not provided an interpreter during the criminal proceeding against them; and the public defender failed to act in an efficient manner.

9. The petitioners say that the alleged victims are members of the Purépecha indigenous people, hail from Ahuirán in Michoacán State, and their native language is Purépecha (Tarasco). They say that Irineo Martínez Torres, who was 64 when the petition was lodged with the IACHR, was virtually monolingual at the time of his arrest. They also say that Candelario Martínez Damián had learned basic Spanish at primary school, which he had attended for only a few years, but that he chiefly spoke Purépecha. They say that Irineo and Candelario (uncle and nephew), were well-known wood craftsmen, an activity in which they engaged up to the time of their arrest.

10. According to the petitioners, from December 6 to December 7, 1997, the alleged victims travelled by bus from Michoacán to Nuevo Laredo, Tamaulipas in order to complete the sale of a number of wooden columns decorated with carved designs. The columns were reputedly transported by the buyer to Nuevo Laredo by truck and were allegedly out of the alleged victims' keeping for more than 24 hours. They say that upon their arrival at Nuevo Laredo, the alleged victims made their way to where the truck was located to unload the columns and take receipt of their money. They say that shortly after they arrived they were arrested by agents of the Federal Judicial Police who, they claim, acted without an arrest warrant.

11. They say that in the course of the arrest the officials physically assaulted the alleged victims with punches and kicks to various parts of their bodies as well as striking them with their firearms. The petitioners say that while this happened Irineo Martínez Torres struck his head against the truck after he was pushed by one of the policeman, and sustained a cut above his eye. They say that these acts of violence were not reported immediately for fear of reprisal. However, during a confrontation proceeding between Irineo Martínez Torres and a policeman, Mr. Martínez Torres identified the policeman as his assailant. The physical mistreatment was also charged in the constitutional remedies (hereinafter *Amparo* suit) filed with the Third Collegiate Court of the 19th Circuit in Ciudad Victoria on October 20, 1999.

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<sup>2</sup> The English version of the petition was received on the above date. The Spanish version of that document was received later, on June 14, 2001.

12. They also say that the police had warned them that they should plead guilty to transporting cannabis in the above-mentioned columns. They argue that as a result of the alleged victims' poor grasp of Spanish, Irineo Martínez Torres had not understood the charges made by the police, while Candelario Martínez Damián had succeeded in understanding enough to plead innocent. According to the petitioners the alleged victims remained in custody from then until the time the petition was lodged with the IACHR.

13. The petitioners say that as a result of the criminal process against them, in a judgment dated June 29, 1998, the Judge of the Third District Court of Nuevo Laredo convicted the alleged victims of the crime against health of transportation of cannabis and sentenced them to 12 years and eight months of imprisonment, imposing a fine of 4,232 pesos. According to the petitioners, this decision was confirmed by the Fifth Unitary Tribunal of the 19th Circuit of Nuevo Laredo on August 21, 1998. They say that they filed a direct *Amparo* suit against that decision with the Third Collegiate Court of the 19th Circuit in and for Ciudad Victoria which was rejected in a decision of September 13, 2000

14. They say that the trial was conducted entirely in Spanish and that neither the judicial authorities nor the Office of the Attorney General afforded the alleged victims the assistance of an interpreter, despite their obvious incomprehension. They also argue that the public defender's office provided them with ineffective counsel as evinced, for example, by the fact that the public defender failed to explain the legal processes to them, request a translator, or investigate the circumstances of the arrest, and because he filed the appeal in a standard format.

15. They also say that the judicial authorities based their decision on information obtain by the police, allegedly through the use of violence, and that they did not take into account evidence that allegedly contradicted the report.<sup>3</sup> They hold that the record of the judicial proceedings contains no evidence of the criminal responsibility of the alleged victims. They also claim that the competent authorities failed to investigate the acts of physical aggression that they are said to have suffered in the course of the arrest.

16. The petitioners say that based on the facts charged in the petition the State of Mexico has violated Articles 1, 5, 7, 8, and 25 of the American Convention to the detriment of the alleged victims. As regards exhaustion of remedies under domestic law they hold that the *Amparo* suit filed against the judgment at second instance had exhausted the pertinent jurisdictional remedies. They say that with this remedy the violations allegedly committed during the criminal proceeding against the alleged victims were invoked before the domestic system of justice. They argue that an appeal for revision regarding the *Amparo* suit was not an appropriate remedy because such petitions are used to challenge decisions issued in direct *Amparo* suit proceedings pertaining to the constitutionality of a law or an international treaty, or that directly interpret a constitutional provision.

17. As to the petition for recognition of innocence mentioned by the State, the petitioners say that it is not a remedy to which the alleged victims had recourse because its invocation required the existence of new evidence that exonerated their criminal responsibility, and they argue that the evidence of innocence was adduced during the alleged victims' trial.

18. As regards the filing date of the petition with the IACHR, they argue that since they were informed of the judgment that they say exhausted domestic remedies on September 20, 2000, the petition was lodged in a timely manner.

## **B. The State**

19. The State argues that the alleged victims were arrested, prosecuted, and punished in accordance with the criminal laws in force for having committed the crime against health of transportation

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<sup>3</sup> They claim that while in detention, at the request of a police agent the alleged victims had signed a document the contents whereof they were ignorant at the time. They say that the document was a ratification of the police report that would incriminate them in the crime of drug trafficking.

of cannabis. The State says that although they were sentenced to 12 years and eight months of imprisonment, Irineo Martínez Torres regained his liberty on December 22, 2005, while Candelario Martínez Damián did so on March 14, 2006. In this regard, the State says that the alleged victims recovered their freedom thanks to the intercession of the National Committee for the Development of Indigenous Peoples.<sup>4</sup>

20. The State argues that the petition is groundless because the facts alleged do not tend to establish violations of provisions set out in the American Convention. In particular, the State argues that in the judicial proceeding against the alleged victims the judicial authorities observed the constitutional guarantees afforded defendants and that they had every opportunity to mount their defense. As regards the performance of the alleged victims' counsel, the State holds that from the time of their initial statements they were duly assisted by a public defender.<sup>5</sup> With respect to the arrest, the State argues that it had been carried out in accordance with the due process guarantees established in the Mexican Constitution and the Federal Code of Criminal Procedure, and that in the medical examination of the alleged victims following their arrest no evidence had been found of old or recent physical violence other than a graze on Mr. Martínez Torres' face,<sup>6</sup> and that, therefore, the supposed torture of Irineo Martínez Torres had not existed. As regards the lack of an interpreter to assist the alleged victims during the proceeding, the State says that in the records of the proceedings in the domestic courts there was no indication that they were Purépechas.

21. The State also says that the alleged victims access to the judicial proceedings provided by Mexican law. It says that the evidence contained in the record of the trial was sufficient to prove the elements of the crime for which they were convicted, and the unfavorable outcome of the appeals lodged by the alleged victims cannot be invoked as grounds that the State of Mexico bears international responsibility. The State further maintains that the petitioners have turned to the IACHR to seek a review of the judgments handed down by the domestic courts, which authority exceeds the Commission's jurisdiction.

22. As for the admissibility of the petition, the State argues that although the alleged victims might have exhausted some of the proceedings available under domestic law, the violations alleged in the petition submitted to the IACHR have not been invoked as injuries in the domestic courts. It also says that no complaint has been lodged claiming the alleged violation to the physical integrity of the alleged victims.

23. The State adds that in view of the purported lack of an interpreter of to assist the alleged victims, the supposed torture committed by the police, and the serious omissions in their defense, the alleged victims should have requested a new trial at first instance, as provided in the Federal Code of Criminal Procedure, and not merely filed an appeal on the grounds of lack of cause to support the offense charged.

24. In addition, the State claims that there are domestic remedies which have not been exhausted. In that regard, it notes that a petition for recognition of innocence, provided at Article 560 of the Federal Code of Criminal Procedure, should have been interposed and settled by the domestic courts before this international proceeding was invoked.

25. The State holds that the petition filed before the IACHR was untimely lodged. The State advanced two different arguments in that connection: i) in its note of February 13, 2002 (received on

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<sup>4</sup> The State notes that under the interagency cooperation agreement between the aforesaid Committee and the Ministry of Public Security, the alleged victims were released on parole granted by that Ministry's Decentralized Office for Prevention and Rehabilitation.

<sup>5</sup> Argument set out by the State in its communication of February 13, 2004. However, in its first response Mexico mentioned that the alleged victims had been defended by private counsel.

<sup>6</sup> Specifically, the State affirms that in the medical examinations carried out on Mr. Martínez Torres after his arrest, the only thing noted for the record was a "dermoepidermic excoriation on the outer corner of the right edge of brow region," and that in his statement to the investigating officer the alleged victim had claimed that he had struck his right brow against the truck rail during his arrest.

February 14, 2002), the State holds that given that the final decision was communicated on September 20, 2000, the six-month statute of limitations established in the American Convention expired on February 20, 2001, before the petition was lodged; ii) subsequently, in its note of February 13, 2004, it says that the petitioners had presented their complaint in October 2001, "four years after having been notified of the decision in the *Amparo* suit."

26. The State also reiterated on a number of occasions a request that the instant matter be closed on the grounds that the existence of proceedings which had been open for extensive lengths of time without a contrary decision having been adopted left the State in a state of defenselessness.

27. Finally, the Mexican State noted that the instant petition is inadmissible and requested that the IACHR find as much.

#### **IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY**

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

28. The petitioners are authorized by Article 44 of the American Convention to lodge petitions to the IACHR. The petition identifies as alleged victims, individuals on whose behalf the State of Mexico undertook to respect and ensure the rights enshrined in the American Convention. As regards the State, the Commission notes that Mexico has been a State party to the American Convention since March 24, 1981, when it deposited its instrument of ratification. Thus, the Commission is competent *ratione personae* to examine the petition. The Commission is competent *ratione loci* to examine the petition because it alleges violations of rights protected by the American Convention that are said have occurred in the territory of Mexico, a State party to said treaty.

29. The Commission is competent *ratione temporis* because the obligation to respect and ensure the rights protected in the American Convention was already in force for the State as of the date of the facts alleged in the petition. Finally, the Commission has *ratione materiae* competence because the petition alleges possible violations of human rights protected by the American Convention.

##### **B. Exhaustion of domestic remedies**

30. 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 American 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. The purpose of this requirement is to allow national authorities to examine alleged violations of a protected right and, if appropriate, to resolve them before its consideration by an international authority.

31. The prior exhaustion rule applies when there are actually available in the national system suitable and effective remedies to repair the alleged violation. In that connection, Article 46(2) specifies that the rule does not apply when: a) the domestic legislation of the State concerned does not afford due process of law for the protection of the right in question; b) the alleged victim did not have access to the remedies under domestic law; and, c) there has been unwarranted delay in rendering a final judgment under said remedies. As Article 31 of the IACHR Rules of Procedure provides, when the petitioner invokes one of these exceptions, it is up to the State concerned to demonstrate that the remedies under domestic law have not been exhausted, unless that is clearly evident from the record.

32. With regard to this rule, the State argues that the petition is inadmissible because the alleged violations of rights protected in the American Convention were not invoked in the domestic law courts and no petition for recognition of innocence was filed.

33. On the contrary, the petitioners argue that the judicial remedies under domestic law were appropriately exhausted with respect to the alleged violations; to wit, that the alleged victims were

assaulted at the time of their arrest; they were not provided an interpreter during the criminal proceeding; and the public defender failed to act in an efficient manner; therefore, their fair trial guarantees were not observed. They consider that the decision to refuse the *Amparo* suit filed against the judgment at second instance exhausted the judicial remedies that the alleged victims could have sought.

34. The Commission then analyzed the arguments with regard to the rule of exhaustion of domestic remedies, bearing in mind that there is no dispute between the parties over the following: the alleged victims were arrested on December 7, 1997. In a judgment of June 29, 1998, the Judge of the Third District Court of Nuevo Laredo convicted them of the health crime of transportation of cannabis and sentenced them to 12 years and eight months of imprisonment and a fine of 4,232 pesos. The sentence was confirmed by the Fifth Unitary Tribunal of the 19th Circuit of Nuevo Laredo on August 21, 1998. On September 13, 2000, the Third Collegiate Court of the 19th Circuit of Ciudad Victoria refused the direct *Amparo* suit filed by the alleged victims against the earlier judgment. The alleged victims were notified of the latter decision on September 20, 2000.<sup>7</sup>

35. With respect to the State's submission regarding non-compliance with the rule set out in the Convention, it should be noted with respect to the reported assault of the alleged victims during their arrest that the record in possession of the IACHR states the following:

a) In the proceeding on the *Amparo* Suit in the Third Collegiate Court of the 19th Circuit of Ciudad Victoria –identified as Direct Criminal *Amparo* Suit 184/99-III-,<sup>8</sup> the alleged victims stated, “[a]s the record shows we were beaten and threatened by elements of the judicial police who arrested as illegally.”<sup>9</sup>

b) During the confrontation proceeding held with an agent of the Federal Judicial Police, Irineo Martínez Torres said that he “recognized his confronted witness as one of the persons who took part in his arrest and as the one who mistreated and beat him when he arrested him; that was the reason why he struck himself on the truck and cut his eyebrow; he did not say so to the Office of the Attorney General because the same agents told him that if he said how he had hit his eyebrow he would beat him again.”<sup>10</sup> This proceeding was used as proof in the judgment handed down by the judge of the Third District Court of Nuevo Laredo, and considered in the decision of the Fifth Unitary Tribunal of the 19th Circuit of Nuevo Laredo.<sup>11</sup> Also, in the framework of the aforesaid *Amparo* suit, the alleged victims mentioned that “the record shows that Irineo was beaten by the Judicial Police agent”; and that “the person responsible omitted to take into account the confrontation proceeding in which Irineo Martínez Torres clearly denounces the beating he received from the Judicial Police agent.”<sup>12</sup>

c) Also during the *Amparo* suit, the alleged victims said that “the record shows that we were subjected to intimidation, torture, and coercion to get us to agree with what it says in the police report”<sup>13</sup> and that “we were subjected to both physical and emotional torture when we were taken to the military barracks where the wooden columns were supposedly deposited.”<sup>14</sup> It was also asserted that the authorities failed to comply with the obligation under international treaties to investigate complaints of torture.

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<sup>7</sup> Although the record before the IACHR contains no written record of the date on which notice of the above-mentioned judgment was served, the petitioners and the State concur that this was done on September 20, 2000.

<sup>8</sup> Claim of *Amparo* filed on October 20, 1999, and admitted on November 3, 1999, as noted in Findings of Fact ONE and TWO of the judgment of the Third Collegiate Court of the 19th Circuit of Ciudad Victoria of September 13, 2000.

<sup>9</sup> Judgment of the Third Collegiate Court of the 19th Circuit of Ciudad Victoria of September 13, 2000, p. 97.

<sup>10</sup> Judgment of August 21, 1998, of the Fifth Unitary Tribunal of the 19th Circuit of Nuevo Laredo. Whereas Three., paragraph jj).

<sup>11</sup> Judgment of August 21, 1998, of the Fifth Unitary Tribunal of the 19th Circuit of Nuevo Laredo. Whereas Three, part one.

<sup>12</sup> Judgment of the Third Collegiate Court of the 19th Circuit of Ciudad Victoria of September 13, 2000, p. 97.

<sup>13</sup> Judgment of the Third Collegiate Court of the 19th Circuit of Ciudad Victoria of September 13, 2000, p. 94.

<sup>14</sup> Judgment of the Third Collegiate Court of the 19th Circuit of Ciudad Victoria of September 13, 2000, p. 98.

36. Based on the foregoing, the IACHR notes that through the *Amparo* suit the authorities were informed of the alleged acts of physical assault and torture reportedly perpetrated by agents of the State against the alleged victims while they were in their custody. The record also shows that the judicial authority, in examining the petition, ruled that the submissions concerning the supposed physical assault on the alleged victims when they gave their statements were unfounded “in view of the lack of evidence by which to conclude the presence of torture, intimidation, or coercion on the persons of the convicted individuals,”<sup>15</sup> and it made no reference to the claims regarding the mistreatment to which they were allegedly subjected during the arrest.

37. Bearing in mind the foregoing, the IACHR finds that the alleged victims used the measures that were available to them and that the State did not conduct specific investigations into the complaints made. Accordingly, the Commission concludes that the decision that refused the *Amparo* suit exhausted the remedies under domestic law as regards the allegations of physical assault.

38. As to exhaustion of domestic remedies with respect to the lack of assistance of an interpreter and ineffective public defense counsel, the IACHR notes that during the proceeding on the above-mentioned *Amparo* Suit the alleged victims repeatedly made express reference to their “indigenous status” and claimed to experience, therefore, “word difficulty.”<sup>16</sup> They also made assertions with respect to the lack of assistance of interpreters, arguing “that the assistance of a translator has been denied in judicial proceedings.”<sup>17</sup>

39. Furthermore, also asserted in the framework of the aforesaid *Amparo* suit were the alleged violations of the alleged victims’ constitutional guarantee to an adequate defense (based on the inadequate performance of the defense counsel during the criminal proceeding, and through the identification of various situations and actions that appear to confirm this statement).

40. Therefore, the IACHR concludes that the decision that rejected the *Amparo* suit exhausted the remedies under domestic law as regards the alleged failure to appoint an interpreter during the proceedings in the criminal trial and with respect to the reputed ineffectiveness of the public defender.

41. As regards the argument of the Mexican State regarding the failure to lodge a petition for recognition of innocence, the Commission notes that in accordance with Article 560 of Mexico’s Federal Code of Criminal Procedure, that remedy is appropriate on specifically established grounds.<sup>18</sup> In light of the information available in the record and bearing in mind that the Mexican State did not identify the legal circumstance whereby the aforesaid remedy would be appropriate, the IACHR notes that the legal situation of the alleged victims does not appear to fit the specific grounds that warrant its invocation. According to the case law of the inter-American system, the rule of prior exhaustion of domestic remedies

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<sup>15</sup> Judgment of the Third Collegiate Court of the 19th Circuit of Ciudad Victoria of September 13, 2000, p. 123.

<sup>16</sup> Judgment of the Third Collegiate Court of the 19th Circuit of Ciudad Victoria of September 13, 2000, p. 89.

<sup>17</sup> Judgment of the Third Collegiate Court of the 19th Circuit of Ciudad Victoria of September 13, 2000, p. 102.

<sup>18</sup> Article 560 of the Mexican Federal Code of Criminal Procedure:

“Recognition of the innocence of a convicted person is based on one of the following grounds:

I. The sentence was based exclusively on evidence that was later pronounced false;

II. After sentence was passed, public documents came to light invalidating the evidence on which sentence was based or the evidence presented to the court on which the charge and verdict were based;

III. After a person has been convicted of the murder of another person who has disappeared, that other person reappears or irrefutable proof that he is alive is presented;

IV. Two persons have been convicted of the same offence and it is shown to be impossible that both of them could have committed it;

V. The convicted person was sentenced for the same offences in different trials. In this case the most lenient of the sentences shall prevail.

VI.-(abolished).”

set down in Article 46 of the American Convention refers to the judicial remedies that are available, suitable and able to provide an effective solution for the alleged violation of human rights. Furthermore, as the Inter-American Court on Human Rights has repeatedly established, if in a given case an appeal is inappropriate for providing protection in order to remedy a legal situation and is not capable of producing the intended result, then clearly, it does not have to be exhausted. Therefore, the IACHR concludes that the petition for recognition of innocence does not in this case constitute a remedy that the alleged victims should have exhausted.<sup>19</sup>

42. In sum, based on the above considerations the Commission concludes that the requirement set out in Article 46(1)(a) of the American Convention has been met.

### **C. Timeliness of the petition**

43. Under the terms of Article 46(1)(b) of the American 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.

44. The State holds that the petition filed before the IACHR was untimely lodged. In this respect Mexico advanced two different arguments: i) in its note of February 13, 2002 (received on February 14, 2002), the State holds that given that the final decision was communicated on September 20, 2000, the six-month time limit provided in the American Convention expired on February 20, 2001, before the petition was lodged; ii) subsequently, in its note of February 13, 2004, it said that the petitioners had presented their complaint in October 2001, "four years after having been notified of the decision in the *Amparo* suit."

45. The petitioners argue that they have met the time limit provided in the American Convention for lodging petitions with the IACHR.

46. In relation to the instant petition, the IACHR has determined that domestic remedies were exhausted with the decision of the Third Collegiate Court of the 19th Circuit, notice of which was served to the alleged victims on September 20, 2000. Given that the petition was lodged with the IACHR on March 13, 2001, the Commission concludes that it was filed within the prescribed time limit and, therefore, the rule contained in Article 46(1)(b) of the American Convention has been met.

### **D. Duplication and *res judicata***

47. For a petition to be admitted the American Convention requires at Article 46(1)(c), "that the subject of the petition or communication is not pending in another international proceeding for settlement", and at Article 47(d), that it is not substantially the same as one previously studied by the Commission or by another international organization.

48. The applicants alleged that the petition was not presented before any other international forum. The Mexican State does not contest said assertion and there is nothing in the record of the petition to suggest the contrary. Therefore, the IACHR finds that the requirements set forth in Articles 46(1)(c) and 47(d) of the American Convention have been duly met.

### **E. Colorable claim**

49. For the purposes of admissibility, the IACHR must decide, pursuant to Article 47(b) of the American Convention, whether the facts alleged, if proven, could characterize a violation of rights, or, pursuant to paragraph (c) of the same article, or whether the petition is "manifestly groundless" or "obviously out of order." The standard by which these requirements are assessed is different from the one

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<sup>19</sup> Likewise, see IACHR, Report 68/01, Admissibility, Petition 12.117, Santos Soto Ramírez and Sergio Cerón Hernández, Mexico, June 14, 2001, pars. 10-15.



needed to decide the merits of a petition. The Commission must perform a *prima facie* evaluation and determine whether the petition 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. This examination is a summary analysis that does not imply a prejudgment or preliminary opinion on the merits.

50. In this case the petitioners allege that the State bears international responsibility for the alleged assault and violation of the fair trial guarantees of the alleged victims committed during their arrest and in the course of the criminal proceeding instituted against them. For its part, Mexico argues that the instant petition is unfounded since the alleged facts do not tend to establish violations of standards contained in the American Convention, and that the petitioners have turned to the IACHR to seek a review of the judgments handed down by the domestic courts that ran contrary to their interests.

51. The IACHR notes that the instant petition contains claims concerning alleged violations of the right of defense and to due process of law. In this regard, the Commission believes it timely to point out that these allegations require a more in-depth analysis that should be carried out during the examination of merits in the matter.

52. The Commission finds that, if proven, the facts alleged by the petitioners could characterize a possible violation of rights recognized in Articles 5, 7, 8, and 25 of the American Convention, in connection with Article 1 of said instrument. Furthermore, taking into consideration the *iura novit curia* principle, the IACHR considers that, if proven, the reported lack of an interpreter to ensure the right of the alleged victims to mount a defense in conditions of equality could characterize an alleged violation of Article 24 of the American Convention. In addition, in the merits stage the Commission will analyze the potential applicability of Articles 1, 6, and 8 of the Convention against Torture, as appropriate.<sup>20</sup>

53. Accordingly it concludes that the requirement set forth in Article 47(b) of the American Convention has been met.

## V. CONCLUSION

54. The Commission concludes that it is competent to examine the complaint presented by the petitioners and that the petition is admissible, in accordance with Articles 46 and 47 of the American Convention, as regards the alleged violations of Articles 5, 7, 8, and 25 of the American Convention in connection with Article 1.1 thereof. Additionally, by the application of the *iura novit curia* principle, the Commission will examine the possible violation of Article 24 of the American Convention at the merits stage. In the merits stage the Commission will also analyze the potential applicability of Articles 1, 6, and 8 of the Convention against Torture, as appropriate.

55. Based on the foregoing arguments of fact and law, and without prejudging the merits of the matter,

## THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

### DECIDES:

1. To declare the instant petition admissible with respect to Articles 5, 7, 8, and 25 of the American Convention in connection with Article 1 of said international instrument. Additionally, by the application of the *iura novit curia* principle, the Commission will examine in the merits stage the possible violation of Article 24 of the American Convention and the potential applicability of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

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<sup>20</sup> The Mexican State has been a party to the Inter-American Convention to Prevent and Punish Torture since February 11, 1987, when it deposited its instrument of ratification.

2. To notify the parties of this decision.
3. To continue with the analysis on the merits.
4. To publish the present report and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Washington, D.C., on the 12<sup>th</sup> day of the month of July 2010.  
(Signed): Felipe González, President; Paulo Sérgio Pinheiro, Vice-President; Dinah Shelton, Second Vice-President; Luz Patricia Mejía Guerrero, María Siliva Guillén, and Rodrigo Escobar Gil, Members of the Commission.