

REPORT No. 161/11
PETITION 733-99
ADMISSIBILITY
JUAN DE LOS SANTOS GIMÉNEZ MARECOS
PARAGUAY
November 2, 2011

I. SUMMARY

1. On July 30, 1999 the Inter-American Commission on Human Rights (hereinafter “the Commission”) received a petition from Mr. Juan de los Santos Giménez (hereinafter “the petitioner”). It alleges that the petitioner was the victim of the Paraguayan State’s (hereinafter the “State” or the “Paraguayan State,” or “Paraguay”) violation of his rights to humane treatment, to a fair trial, and judicial protection contained, respectively, in Articles 5, 8, and 25 of the American Convention on Human Rights (hereinafter the “Convention” or the “American Convention”) in connection to Articles 1.1 and 2 of that instrument, as well as violations of Articles 1, 6, 7, 8, and 9 of the Inter-American Convention to Prevent and Punish Torture.

2. The petition indicates that Mr. Juan de los Santos Giménez Marecos, while an agent of the national police, was beaten by his superior on June 16, 1995 during a shooting practice. It asserts that the beating was administered to a spot where he had had surgery two years earlier and that his superior knew of this surgery. In addition to the beating, he was forced to do vigorous physical exercises as punishment, which hurt him in such a way that he had to be hospitalized and undergo a second operation.

3. The petition alleges that these events were reported to the police authorities and that an administrative summary proceeding was initiated which was one-sided and concluded with the acquittal of the accused superior officer. In addition, a criminal complaint was filed in June 1997, which was “mislaidd,” and years later, in June 2002, the proceeding was definitely dismissed because the statute of limitations had run out on the criminal action, and the petitioner was not notified of that decision. The petitioner adds that the events that he denounced as torture were categorized as serious injuries with the argument that torture did not appear in the Penal Code in effect at the time of the events.

4. The State argues that the proceedings initiated based on the petitioner’s complaints were conducted in accordance with the procedural rules and with respect for the standards of due process. It also alleges that the petitioner did not exhaust the domestic remedies since he could have filed an appeal against the decision definitively dismissing the criminal investigation, as well as unconstitutionality appeals and civil action for damages and injuries. It asserts that the petitioner seeks to have the Commission act as a court of appeals, and on that basis asks that this petition be declared inadmissible.

5. In accordance with the provisions of Articles 46 and 47 of the American Convention as well as Articles 30 and 36 of its Rules of Procedure, and after analyzing the positions of the parties, the Commission decided to declare the petition admissible. Therefore, the IACHR decides to notify the parties of its decision and to continue with analysis of the merits regarding the alleged violations of Articles 5 (right to humane treatment), 8 (right to a fair trial), and 25 (judicial protection) as they relate to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) of the American Convention, as well as Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture. The Commission also decided to inform the parties of this decision, to publish it, and to include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCESSING BY THE COMMISSION

6. On July 30, 1999 the Commission received a petition from Mr. Juan de los Santos Giménez Marecos. In communications dated January 11, 2001 and March 26, 2007, the IACHR asked the petitioner for additional information and the petitioner provided that information in a letter dated September 6, 2007.

7. In a note dated December 3, 2007, the Commission processed the petition and asked the State to submit its observations regarding the admissibility of the case within a period of two months. On February 20, 2008, the State submitted its response to the petition, which was forwarded to the petitioner on March 4, 2008.

8. The petitioner submitted additional observations on April 9 and July 7, 2008, March 4 and September 23, 2009, and March 2, 2010. The relevant portions of those observations were duly forwarded to the State.

9. For its part, the State submitted additional information on May 22, June 12, and October 24, 2008, April 16, August 13, and December 29, 2009, and January 12, 2010. The relevant portions of those observations were duly forwarded to the petitioner.

10. It should be noted that in communications dated April 15 and December 23, 2009, the State indicated its willingness to seek a possible friendly settlement of the matter. Those communications were forwarded to the petitioner, who indicated his agreement to open up a dialogue with the State. Nonetheless, in subsequent communications, the State insisted on the inadmissibility of the petition, so that the dialogue process was never opened.

III. POSITIONS OF THE PARTIES

A. Position of the petitioner

11. Mr. Giménez reports that on June 16, 1995, while he was an agent of the national police, he was called to participate in shooting practice in a National Unit located in the city of Paraguairí. According to the petitioner, after shooting two times, his weapon failed. When he heard the instructor's assistant addressing him, he turned to answer him. At that very moment, First Officer Chaparro told him "come here bandit" and used a billy club to beat him on the head and back while accusing him of disobeying his order not to look back once he was on the firing line. He also punished the petitioner and all the others by having them perform vigorous physical exercises, which he had to do for more than an hour and a half, despite his objections due to the pain produced by the beating. The petitioner makes it clear that he advised the First Officer that he was beating him on the spot where he had had surgery in 1993, on the basis of which he had a certificate of disability.

12. The petitioner spent a week in bed and on Monday, June 19, 1995 he went to the Police Polyclinic where he was admitted and remained there for 18 days. He adds that during the four years between these events and the submission of his complaint to the IACHR he was hospitalized seven times in relation to the same injury.

13. The petitioner alleges that, as a result of the blows he received in 1995, he underwent a second spinal column operation in October 1996, which was unsuccessful. During that hospitalization, the petitioner asserts that Officer Chaparro entered his room with five armed men from the National Police, threatened him, and told him he was feigning his illness.

14. In the petition, Mr. Giménez indicates that he should have had another operation since his condition grew worse after the second operation. However, "he didn't dare have another operation since a doctor who works at the Police Polyclinic told him there were people interested in giving him an overdose, putting his life at risk." In his petition, the petitioner indicated that he suffered from intense pain, cannot sit for long, and didn't dare to risk his life at the Police Polyclinic, the only institution that covers his

medical expenses. He also asserted that he has stopped going to that healthcare center and that he can't afford private treatment. In this regard, in his latest communications, the petitioner stated that his health continues to be in delicate conditions and medical diagnoses conclude that his disks show degenerative changes.

15. The petitioner states that he reported the facts to police justice and that an administrative summary proceeding was initiated against Officer Chaparro for failure to carry out his police duties. He alleges that the proceeding was one-sided since only the witnesses presented by the accused officer were given a hearing while his witnesses were not. He also states that the opinion of the judge in the summary proceeding submitted to the Interim Director of the Police Justice stated that Mr. Giménez had performed the exercises following the orders of the instructor and withstood the pain voluntarily and "what he should have done was stop doing the exercises with or without the consent of the instructor...." The petitioner states that on this basis, on October 15, 1997 a ruling was issued ordering the acquittal of Officer Chaparro.

16. The petitioner states that, because of his complaint and because he was considered disloyal and undisciplined, a summary proceeding was filed against him and he was convicted on November 26, 1999 and eliminated from the payroll as of January 1, 2000. He indicates that he did not collect a salary for two years and that he later managed to obtain a retirement benefit of 30% of his salary.

17. He also points out that in June 1997 he submitted a complaint for abuse of authority, bodily harm, and mistreatment with the Human Rights Department of the Office of the Public Prosecutor of the State (*Fiscalía General del Estado*). He states that after much insistence on knowing the status of the investigation, they informed him that the complaint had been "mislaid" so he submitted another complaint on June 22, 2000. He adds that on December 28, 2001 the prosecutor filed charges against Officer Chaparro for serious injury and in December 2001 the petitioner asked that an oral trial be opened for serious injury, bodily injury in the exercise of public functions, and torture.

18. On February 28, 2002 the prosecutor sought the definitive acquittal of the accused based on the fact that torture was not established in the Penal Code in effect at the time of the events and that the statute of limitations on the crime of serious injuries had run out one year before the complaint was filed. The Court of Guarantees hearing the case so ordered on June 24, 2002. The petitioner claims that he was not informed of the decision on definitive acquittal.

19. In response to the State's allegation that he should have appealed to the higher court, in addition to filing unconstitutionality appeals, the petitioner indicated that under the Paraguayan criminal system it is the responsibility of the Prosecutor's Office to initiate proceedings for crimes committed in the course of public duties. He clarifies that in his case, the Prosecutor's Office not only failed to file an appeal but also issued an opinion in the lower court declaring expiration of the statute of limitations and accordingly the acquittal of the accused, leaving the petitioner without any means of defense. In this regard, he alleges that acts of torture cannot and should not be subject to prescription. In addition, he points out that action for unconstitutionality is an extraordinary remedy and therefore he didn't have to exhaust it. In addition, he notes that any civil action for damages and injuries he attempted would have been rejected because there was a decision for acquittal in the criminal forum.

20. Based on the above, the petitioner asks the Commission to declare that the Paraguayan State, to his detriment, has violated the rights to humane treatment, to a fair trial, and judicial protection contained, respectively, in Articles 5, 8, and 25 of the American Convention on Human Rights in connection to Articles 1.1 and 2 of that instrument, as well as Articles 1, 6, 7, 8, and 9 of the Inter-American Convention to Prevent and Punish Torture.

B. Position of the State

21. The State alleges that the petitioner and alleged victim did not exhaust domestic remedies since the remedies indicated in the petition as being exhausted are not the remedies that the

legal system of the Republic of Paraguay provides for citizens to make a claim for justice. It adds that the requirement established by the Convention and the Commission's Rules of Procedure clearly indicates that remedies must be judicial and that verbal complaints filed by Mr. Juan de los Santos Giménez do not meet this requirement.

22. The State reported that the Police Justice Division conducted an administrative summary proceeding to investigate the alleged act of torture to which Mr. Juan de los Santos Giménez was subjected on June 16, 1995, and that the accused was acquitted in a decision dated October 15, 1997. It adds that an administrative summary proceeding was also conducted based on newspaper reports referring to the case and the alleged plan to murder Mr. Juan de los Santos Giménez in the hospital, as alleged by him. In this regard, the State indicates that in a decision dated October 22, 1999, the Director of Police Justice also ordered that summary proceeding to be archived.

23. It points out that the events referred by the petitioner occurred in June 1995 and that it was not until the year 2000 that the petitioner submitted the formal complaint to the Public Prosecutor's Office, since in the meanwhile he submitted only oral complaints. In that sense, the State alleges that the complaint filed with the General Prosecutor's Office on June 22, 2000 was analyzed and investigated in the light of the previous Penal Code, which did not consider the punishable act of torture, because the events date from June 16, 1995, so that the offense could only be categorized as a serious injury, which has a four-year statute of limitations for filing a criminal action, which ran out on June 16, 1999. It clarifies that, based on the arguments made by the prosecutor on May 24, 2002, the complaint concluded with the definitive acquittal of Mr. Chaparro due to lapse of the criminal action.

24. The State indicates that the petitioner failed to file appeal remedies before a higher court and unconstitutionality appeals before the Supreme Court of Justice. It asserts that if the petitioner did not have the financial means to exercise the corresponding court actions he could have sought a public defender. The State also points out that the petitioner did not utilize domestic remedies to file a civil court action to seek reparations or compensation.

25. It concludes that the criminal proceeding was conducted in accordance with the procedural rules and with respect for the standards of due process, concluding with the acquittal of the officer allegedly responsible for the acts, so that the Commission cannot act as a court of appeals to review domestic decisions, as sought by the petitioner. Thus, the State asks the Commission to declare this petition inadmissible based on a failure to exhaust domestic remedies and because the actions reported by the petitioner do not characterize violations of human rights.

IV. ANALYSIS OF ADMISSIBILITY

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

26. The petitioner has a legitimate right to submit a petition to the Commission as provided in Article 44 of the American Convention. The petition names as the alleged victim an individual with respect to whom the Paraguayan State has assumed the commitment to respect and guarantee the rights recognized by the American Convention. With respect to the State, the Commission notes that Paraguay is a State Party to the Convention, having deposited its ratifying instrument on August 24, 1989. Therefore, the Commission is competent *ratione personae* to examine the petition.

27. The Commission is competent *ratione loci* to examine the petition since it alleges violations of rights protected by the American Convention committed within the territory of a State Party to it. The IACHR is competent *ratione temporis* by virtue of the American Convention and the Inter-American Convention to Prevent and Punish Torture because both instruments were already in force for the State at the moment of the facts. Paraguay ratified the Inter-American Convention to Prevent and Punish Torture on February 12, 1990. Finally, the Commission is competent *ratione materiae* because the petition alleges possible violations of rights protected by the above mentioned instruments.

B. Other admissibility requirements

1. Exhaustion of domestic remedies

28. Article 46 of the American Convention establishes that in order for a petition to be admitted it is necessary "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 domestic authorities to learn of the alleged violation of a protected right and, if appropriate, to resolve the matter before it is heard by an international body.

29. The petitioner alleges that he went to the police and judicial authorities to report the events in which he had been the victim. In this regard, he indicates that both the administrative summary proceeding and the criminal investigation conducted against his superior were dismissed by the respective authorities, so that he met the exhaustion of remedies requirement.

30. The Paraguayan State alleged that the petitioner had not met the requirement established by Article 46 of the Convention, in that domestic remedies had not been exhausted. It indicates that the petitioner could have filed an appeal against the definitive acquittal, as well as unconstitutionality appeals and civil actions for damages and injuries. The State clarifies that the criminal complaint submitted by the petitioner was dismissed because the statute of limitations had run out, given that the events reported occurred in 1995 and the complaint was filed in 2000.

31. Based on what has been presented by the petitioner and the documents he has submitted, the Commission notes that he was admitted to a National Police hospital four days after the alleged beating and spent 18 days there. In subsequent months, he was hospitalized several times more, always informing hospital staff of the alleged injuries suffered at the hands of his superior officer.

32. Based on the complaint submitted to the Commander of the National Police in May 1996, a summary administrative proceeding was filed against Officer Chaparro and that administrative proceeding concluded with the acquittal of the accused on October 15, 1997.

33. The case file contains copy of the record filed by the Public Prosecutor's Office due to the criminal complaint submitted by Mr. Juan de los Santos Giménez Marecos on June 11, 1997, against Officer Chaparro, for abuse of authority, bodily injury, and mistreatment.

34. Thus, the Commission notes that State officials have known of the events and circumstances reported in this petition since June 19, 1995 and neither the medical staff, nor the Commander of the National Police, nor the Judge in the Summary Proceeding informed the Office of the Public Prosecutor of the complaints regarding injuries filed by Mr. Giménez Marecos.

35. The Commission additionally notes that there is no record at all of investigations conducted by the Office of the Public Prosecutor following the submission of the petitioner's criminal complaint in June 1997 and that it was not until June 2000 after a new complaint had been filed that the authorities initiated the respective investigations. The State asserts that the complaint was filed five years after the events occurred, so that it was definitively dismissed because the statute of limitations had run out. The petitioner alleges that he was not duly notified of that decision and, in that regard, the State has not submitted any documentation indicating otherwise.

36. In view of what has been presented above, the Commission concludes that the requirement regarding the exhaustion of domestic remedies established in Article 46 of the American Convention has been met.

2. Deadline for submitting the petition

37. Article 46.1.b of the Convention establishes that a petition must be submitted within six months of the date when the party whose rights are alleged to have been injured was notified of the final decision at the domestic level.

38. In the instant case, the Commission notes that the ordinary domestic remedies were exhausted on June 24, 2002 with the decision on definitive acquittal, subsequent to the submission of the petition. In that sense, the Commission concludes that the petition was submitted on a timely basis.

3. Duplication of proceedings and international *res judicata*

39. Article 46.1.c establishes that the admission of a petition is subject to the requirement that the matter "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 that is "substantially the same as one already studied by the Commission or another international organization." In the instant case, the parties have not alleged, nor does the record indicate, any such grounds for inadmissibility.

4. Characterization of the alleged facts

40. It is the responsibility of the Inter-American Commission to determine whether the facts described in the petition, if proven, could characterize violations of the rights enshrined in the American Convention, in accordance with the requirements of Article 47.b or if, in accordance with Article 47.c, the petition should be rejected as "manifestly groundless" or "obviously out of order." At this procedural stage the IACHR must perform a *prima facie* evaluation without prejudging the merits of the case.

41. Neither the American Convention nor the IACHR Rules of Procedure require a petitioner to identify the specific rights allegedly violated by the State in the matter brought before the Commission, although petitioners may do so. It is for the Commission, based on the system's jurisprudence, to determine in its admissibility report which provisions of the relevant Inter-American instruments are applicable and could be found to have been violated if the alleged facts are proven by sufficient elements.

42. The petitioner asserts that he was tortured by a superior officer while participating in a shooting practice and he alleges that the facts reported to the competent authorities were not investigated efficiently. At this procedural stage, the Commission does not have to determine whether the State committed violations to the detriment of the alleged victim. However, it believes that if the petitioner's allegations are proven in the merits phase the facts could constitute violations of his rights to a humane treatment, to a fair trial, and judicial protection enshrined, respectively, in Articles 5, 8, and 25 of the

American Convention, in connection to Articles 1.1 and 2 of the same instrument. If proven, the facts could also constitute violations of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

V. CONCLUSIONS

43. The Commission concludes that it is competent to hear the instant case and that the petition is admissible in accordance with Articles 46 and 47 of the American Convention, with respect to the rights enshrined in Articles 5, 8, and 25 of the American Convention, all in connection to the obligations under Articles 1.1 and 2 of that international instrument, as well as Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

44. Based on the factual and legal arguments presented above, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant petition admissible with respect to the rights enshrined in Articles 5, 8, and 25 of the American Convention, in connection to the obligations under Articles 1.1 and 2 of the same instrument, as well as Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

2. To forward this report to the petitioner and the State.

3. To proceed with its analysis of the merits of the case.

4. To publish this report and include it in the Annual Report of the Commission to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 2nd day of the month of November, 2011.
(Signed): Dinah Shelton, President; José de Jesús Orozco Henríquez, First Vice-President; Rodrigo Escobar Gil, Second Vice-President; Paulo Sérgio Pinheiro, Felipe González, Luz Patricia Mejía Guerrero, and María Silvia Guillén, Commissioner.