

REPORT No. 7/12
PETITION 609-98
ADMISSIBILITY
GUILLERMO ARMANDO CAPO
ARGENTINA
March 19, 2012

I. SUMMARY

1. On August 28, 1998, the Inter-American Commission on Human Rights (hereinafter "Inter-American Commission," "Commission," or "CIDH") received a petition from Mr. Guillermo Armando Capo, and by communication of May 20, 2003, attorneys Salvador Heredia and Diego Valente joined as co-petitioners (hereinafter "the petitioners"). The petition was presented on behalf of Mr. Capo and against the Argentine Republic (hereinafter "Argentina" or "the State"), for being internationally responsible under the American Convention on Human Rights (hereinafter "American Convention" or "the Convention"), specifically for the alleged violation of the rights of Mr. Guillermo Armando Capo to personal liberty, judicial guarantees, and equality before the law, protected by Articles 7, 8, and 24 of the American Convention, in relation to Articles 1(1) and 2 of said Convention.

2. The petition indicates that Mr. Guillermo Armando Capo was prosecuted, convicted, and sentenced to a 15-year prison term and a fine of 20,000 pesos for the criminal offenses of engaging in the sale of narcotic substances in a combination of a series of related criminal acts with criminal association (*en concurso real con asociación ilícita*). As of the date of his conviction, on August 5, 1999, Mr. Capo was held in pretrial detention for 4 years and 2 months, unable to avail himself of the benefit of release pending conclusion of the trial against him, like any other confined person, since he was charged with commercialization of narcotics.

3. The State argues that during the time he was in pretrial detention Mr. Guillermo Armando Capo never applied for release or pursued any constitutional remedy whatsoever against the law he considers discriminatory and in violation of his right to personal liberty. For the State, accordingly, the case should be found inadmissible, for failure to exhaust domestic remedies.

4. After analyzing the parties' positions, the Inter-American Commission concludes that it is competent to decide on the claim presented by the petitioners, which is admissible in light of the provisions of Article 46 of the American Convention for Articles 5, 7, 8, 24, 25 thereof, in relation to Articles 1(1) and 2 of the same instrument. Accordingly, the Commission decides to notify the parties, to proceed to analyze the merits in relation to the alleged violations noted above, to publish this admissibility report and include it in its Annual Report to the General Assembly of the OAS.

II. PROCEDURE BEFORE THE COMMISSION

5. The complaint was submitted on August 28, 1998; supplemental information was filed on May 27, 2003. The IACHR forwarded the pertinent parts of the petition to the Argentine State by note of November 20, 2003, and asked that it submit a response within two months. On December 19, 2003, the State requested an extension, which was granted; it sent its observations on the petition by note of May 6, 2005. The Commission forwarded that response to the petitioners.

6. The State submitted additional information by note of December 17, 2008. The petitioners submitted additional observations in a communication received on April 28, 2009. Both communications were duly forwarded.

III. THE PARTIES' POSITIONS

A. The petitioners

7. According to the account in the petition, on August 5, 1999, Mr. Guillermo Armando Capo was convicted to 15 years in prison, costs, and a fine, for being found criminally liable for the crime of aggravated sale of narcotics, committed in an organized series of related criminal acts with criminal association of the organizer, plus falsification of an identity document.

8. The petitioners indicated that a motion for cassation was brought against the guilty verdict; the motion was rejected on March 23, 2000 and a special appeal (*recurso extraordinario*) was filed against that ruling before the Supreme Court.

9. They indicated that Mr. Capo remained in pretrial detention for a total of 4 years and 2 months, making it impossible for him to avail himself of the benefit of release until the conclusion of the trial against him, since he was accused of selling narcotics. They clarify that this limitation is contained in Article 10 of Law No. 24,390, which, they argue, discriminates to his detriment.

10. In a communication received on May 27, 2003, the petitioners reported that the alleged victim was enjoying the benefit of a temporary furlough and that on April 7, 2003, he applied for inclusion in the probation regime (*régimen de semilibertad*).

11. The petitioners asserted that the State of Argentina violated Mr. Capo's rights to personal liberty, to the presumption of innocence, and to equal treatment before the law.

B. The State

12. The State reported that in effect, Guillermo Armando Capo was arrested on May 29, 1995, and on June 5, 1995; he was arraigned and ordered held in preventive detention. It adds that on August 5, 1999, the victim was convicted and sentenced to 15 years in prison, costs, and a fine, as he was considered criminally liable for the crime of aggravated sale of narcotics, for having been committed in an organized series of related criminal acts along with criminal association with the person considered the organizer, along with falsification of an identity document. It asserted that the National Chamber of Criminal Cassation upheld the judgment of the trial court.

13. The State argued that the alleged victim did not exhaust domestic remedies since the record of the case does not indicate that it made any request for release putting forth the unreasonableness of the term of pretrial detention, nor did he file a constitutional motion against Law 24,390, which the petitioner considers contrary to the American Convention. The State reminded the Commission that in cases studied previously, the request for release is the suitable remedy to be exhausted. In addition, it argued that both this procedural mechanism and the constitutional motion constitute effective remedies for remedying the violations alleged by the petitioner, since in situations analogous to those alleged in the instant case these remedies were capable of producing the result for which they were designed, and to provide an adequate remedy to violations of Article 7(5) of the American Convention.

14. By note of December 17, 2008, the State informed the Commission that Mr. Guillermo Armando Capo obtained release under the benefit of parole (*libertad condicional*) on May 29, 2005; clarifying that May 28, 2010 was the date on which the 15-year sentence would run. In addition, it indicated that as of that date, he was the subject of a request for extradition from the Republic of Italy.

15. The State asked the Commission to declare the petition inadmissible, for failure to exhaust domestic remedies.

IV. ANALYSIS OF ADMISSIBILITY

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

16. The petitioners have standing to file a petition with the Commission pursuant to Article 44 of the American Convention. The petition names as the alleged victim an individual with respect to whom the State has undertaken the commitment to respect and ensure the rights recognized in the American Convention. As for the State, the Commission notes that Argentina has been a state party to the Convention since September 5, 1984, the date on which it deposited its instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition.

17. The Commission is competent *ratione loci* to consider the petition, since it alleges violations of rights protected by the American Convention in the territory of a state party thereto. The IACHR is competent *ratione temporis* as the obligation to respect and ensure the rights protected in the American Convention was in effect for the State as of the date on which the violations alleged in the petition are said to have occurred. Finally, the Commission is competent *ratione materiae* because the petition adduces violations of human rights protected by the American Convention.

B. Other admissibility requirements

1. Exhaustion of domestic remedies

18. Article 46(1)(a) of the American Convention provides that in order for a complaint filed with the Inter-American Commission to be admissible, one must have pursued and exhausted domestic remedies, in keeping with generally recognized principles of international law. The purpose of this requirement is to afford the domestic authorities the opportunity to take cognizance of the alleged violation of a right protected and, if appropriate, to have the opportunity to resolve it before it is heard by an international body.

19. In the instant case, Mr. Guillermo Armando Capo stated that “the request for release during the proceeding implied of course the formal request to comply with Article 7(5) of the American Convention on Human Rights.... That I never received a response other than continuous refusals....”

20. For its part, the State indicated that in the 56 exhibits in the case against Mr. Capo there is neither a single request for release on his behalf nor a constitutional motion with respect to Article 10 of Law 24,390, which the alleged victim considers to be in violation of his human rights.

21. From the analysis of the petition and annexes presented by the parties, the Commission notes that Mr. Capo’s defense did raise the unconstitutionality of Article 10 of Law 24,390 at trial, that said position was referred to briefly in the judgment of conviction and rejected, and that the defense questioned it once again in the motion for cassation. The Commission concludes that the State took full cognizance of the claims that gave rise to the instant petition, and that the argument of unconstitutionality presented by the petitioner did sufficiently comply with the requirement of exhaustion of domestic remedies set forth in Article 46(1) of the American Convention.

2. Deadline for filing a petition

22. Pursuant to Article 46(1) of the Convention, in order for a petition to be admitted it must be filed within the time stipulated, i.e. six months after the date on which the alleged victim has been notified of the final decision in the domestic jurisdiction.

23. In the instant case, the petition was received on August 28, 1998 and, the motion for cassation filed by the Mr. Capo’s defense was resolved on March 23, 2000, subsequent to the filing of the petition. In April and May 2000 a special appeal and an appeal for review of facts as well as law (*recurso de hecho*) were filed against that judgment. Thus, the Commission notes that the requirement stipulated in Article 46(1)(b) of the American Convention is satisfied.

3. Duplication of procedures and *res judicata*

24. 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." Article 47(d) of the Convention stipulates that the Commission will not admit a petition that is "substantially the same as one previously studied by the Commission or by another international organization." In the instant case, the parties have not argued any of those circumstances of inadmissibility, nor do they appear from the record.

4. Characterization of the facts alleged

25. Article 47(b) of the American Convention declares inadmissible petitions that do not state facts that tend to establish a violation of the rights guaranteed by the Convention. In the instant case, it is not up to the Commission at this stage of the procedure to decide whether the alleged violations of the American Convention took place. The IACHR made a *prima facie* evaluation and determined that the petition makes allegations which, if proven, could tend to establish possible violations of rights guaranteed by the Convention.

26. Neither the American Convention nor the Rules of Procedure of the IACHR require that the petition identify the specific rights allegedly violated by the State in a matter submitted to the Commission, though the petitioners may do so. It is up to the Commission, based on the case-law of the system, to determine in its admissibility reports which provision of the relevant Inter-American instruments is applicable or could be established as having been violated, if the facts alleged are sufficiently proven.

27. In the instant case, based on the information presented by the parties one notes that Mr. Capo was detained on May 29, 1995, and kept in pretrial detention for more than four years, until August 5, 1999, the date on which his conviction was handed down. In addition, one observes that in calculation done for both pretrial detention and the 15-year prison sentence, the judicial authorities took into account the provision of Article 10 of Law No. 24,390, which establishes differentiated treatment for persons accused of drug-trafficking related crimes. The Commission considers that if petitioners' allegations are proven they could tend to establish violations of Articles 7 (personal liberty), 8 (judicial guarantees), 24 (equality before the law), and 25 (judicial protection) of the American Convention, in relation to Articles 1(1) (obligation to respect and ensure rights) and 2 (duty to adopt provisions of domestic law) of the same instrument, which should be evaluated in the merits stage. In regard to the alleged consequences of the prolonged detention without possibility of release, the Commission will make the corresponding analysis, as far as appropriate and in light with the provisions of Article 5 of the Convention, during the merits stage.

28. The Commission also concludes that from the information provided by the parties it does not have sufficient information or evidence that make it possible to infer alleged violations of Article 11 of the Convention by the Argentine State.

V. CONCLUSIONS

29. The Commission concludes that it is competent to take cognizance of the instant case, and that the petition is admissible under Articles 46 and 47 of the American Convention.

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

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the instant case admissible in relation to the violations alleged of the rights recognized in Articles 5, 7, 8, 24, and 25, in relation to Articles 1(1) and 2 of the American Convention.

2. To declare inadmissible the allegations regarding Article 11 of the American Convention.

3. To notify the parties of this decision.

4. To analyze the merits of the case.
5. To publicize this report and to publish it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 19th day of the month of March 2012.
(Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Felipe González, Second Vice-President; Dinah Shelton, Rodrigo Escobar Gil, Rosa María Ortiz, and Rose-Marie Antoine, Commissioners.