

REPORT No. 16/12¹
PETITION P-1528-11
ADMISSIBILITY
IVAN TELEGUZ
UNITED STATES
March 20, 2012

I. SUMMARY

1. On November 2, 2011, the Inter-American Commission on Human Rights (hereinafter, “the Inter-American Commission” or “the IACHR”) received a petition lodged by Elizabeth Peiffer and Reprieve (hereinafter, “the petitioners”) against the United States of America (hereinafter, “the United States” or “the State”). The petition was submitted on behalf of Ivan Teleguz (hereinafter, “the alleged victim” or “Mr. Teleguz”) who is deprived of his liberty on death row in the state of Virginia.

2. The petitioner contends, among other claims, the actual innocence of the alleged victim, prosecutorial misconduct, unfair clemency review, and restrictive laws governing the appeal phase. Likewise, the petitioners assert that Mr. Teleguz did not receive an effective and adequate defense, that his due process rights were not respected and that the alleged victim was arrested, tried and sentenced to death without having been informed about his right to contact Ukraine consular officers, as provided for in the Vienna Convention on Consular Relations. As of the date of approval of this report, the State has not submitted its observations.

3. Without prejudging the merits of the complaint, after examining the position of the petitioners, and pursuant to the requirements set out in Articles 31 to 34 of its Rules of Procedure, the Inter-American Commission decides to declare the case admissible for the purpose of examining the alleged violation of the rights enshrined in Articles I (right to life, liberty and personal security), XVIII (right to a fair trial), XXIV (right to petition), XXV (right of protection from arbitrary arrest) and XXVI (right to due process of law) of the American Declaration of the Rights and Duties of Man (hereinafter, “the American Declaration”). The IACHR also decides to notify the parties of its decision and include it in its Annual Report to the General Assembly of the OAS.

II. PROCEEDINGS BEFORE THE IACHR

4. The IACHR received the petition on November 2, 2011 and on the 21st of that month, forwarded the relevant parts to the State, granting it a two month period in which to submit its observations. On February 3, 2012, the IACHR reiterated its request to the State. As of the date of the adoption of this report, the Inter-American Commission has not received any observations from the State.

¹ Commissioner Dinah Shelton, a citizen of the United States, did not participate in the deliberations or decision in the instant case as provided in Article 17(2)(a) of the Rules of Procedure of the Inter-American Commission.

Precautionary Measures

5. On December 22, 2011, the IACHR notified the State that precautionary measures had been granted on behalf of the alleged victim, and requested a stay of execution until such time as it should pronounce on the merits of the petition.

III. POSITION OF THE PARTIES

A. Position of the petitioners

6. According to the petition, in 2006, Mr. Teleguz was convicted and sentenced to death by the Circuit Court of Rockingham County, Virginia, for ordering the murder of Stephanie Sipe. According to the information available, in 2007 the Supreme Court of Virginia upheld the sentence on direct appeal; and in 2010, the same Court denied a state habeas petition. The petitioners indicate that the United States District Court for the Western District of Virginia denied a habeas petition without a hearing and without allowing Mr. Teleguz any means of discovery.

7. The petitioners state that Mr. Teleguz has only one more non-discretionary appeal and that he will likely be executed in the spring of 2012. They argue that the alleged victim should not be required to wait until that appeal is heard before the IACHR can consider the petition for two reasons. First, because they consider that there is no effective right to appeal in US federal habeas proceedings, given that the system of procedural default and the almost complete deference given to the decisions of the courts purportedly render the process hollow. Second, because delaying consideration of the petition would effectively deny Mr. Teleguz any realistic prospect of having the alleged violations considered while he is still alive.

8. The petitioners argue that lead counsel was ineffective; that due process was violated; that the US death penalty system does not provide Mr. Teleguz with a meaningful and substantive appeals process; that the State fails to disclose the lethal injection's procedures; and that the right to consular notification under the Vienna Convention on Consular Relations was violated.

9. Regarding the first allegation, the petitioners submit that state-appointed defense counsel at trial missed significantly favorable evidence and failed to investigate promising leads². They indicate, *inter alia*, that counsel failed to impeach the key prosecution witnesses, to reasonably address evidence of future dangerousness, and to make use of readily available evidence to disprove the prosecution's allegations on future dangerousness. According to the petitioners, there is a reasonable likelihood that had it not been for these alleged errors, Mr. Teleguz would not have been sentenced to death. Petitioners also mention that there is no evidence physically linking Mr. Teleguz to the crime and that he was convicted largely on testimony that has now been retracted, discredited, or that could have been easily discredited by competent counsel at the initial trial. They assert that the ineffectiveness of counsel at both the guilt/innocence and the penalty phases of the trial violated the alleged victim's due process rights under Articles I, XVIII and XXVI.

10. According to the petitioners, prosecutors withheld crucial evidence weakening their case and failed to correct testimony that they knew or ought to have known was false. Prosecutors allegedly led jurors to believe that Mr. Teleguz participated in a previous murder that never took place. Additionally, they purportedly relied upon his alleged connections with the Russian mafia to secure a death sentence, while at the same time they concealed information from federal and state law enforcement agencies that showed that Mr. Teleguz had no involvement with such criminal organization. Petitioners argue that this misconduct resulted in a flawed and unfair trial and violated Mr. Teleguz's rights under Article I, XVIII, XXV and XXVI of the American Declaration.

² According to the available information, defense counsel at trial was state-appointed (Ivan Teleguz v Loretta K. Kelly (Amended Petition for a Writ of Habeas Corpus) Case No. 7:10-cv-00254, at 5).

11. With regard to the right to appeal, the petitioners contend that strict procedural bars on the consideration of new evidence render the appeals process hollow and make it extremely difficult to correct errors made at trial. They state that reviews limited only to questions of law (as opposed to examination of the law and facts) may not satisfy the requirements of this guarantee. Judicial review in Virginia is purportedly characterized by narrowly defined sentence review at direct appeal and adherence to procedural restriction during post-conviction.

12. According to the petitioners, the recent judgment in *Cullen v. Pinholster*³ further restricts review in the case of a petitioner who had no previous opportunity to present a claim in state courts. They allege that a large amount of substantial evidence in the case was not even considered by the federal judge because of the procedural restrictions and excessive deference to bad state court decisions imposed by the Antiterrorism and Effective Death Penalty Act and by *Pinholster*. Petitioners mention in this respect that the judge for the federal habeas action made it clear that the restrictions under which he could work made his review of the case “exceedingly limited”⁴. Such a restrictive procedural stance, according to the petitioners, is entirely contrary to the heightened standards of due process required in a death penalty case and violates Articles XVIII, XXVI and XXVII of the American Declaration.

13. Regarding the method of execution, the petitioners claim that the Code of Virginia § 53.1-234 merely states that execution by lethal injection “shall be permitted in accordance with procedures developed by the Department” and that these procedures are both confidential and subject to arbitrary amendment. Therefore, the United States would permit Mr. Teleguz to be put to death by means of a lethal injection with no official indication of the drugs to be used; the procedure to be followed; the dosage to be used; or the qualifications, training and respective roles of the members of the execution team. According to the petitioners, by failing to disclose the precise manner in which Mr. Teleguz is to die, the United States places him under a peculiar and terrible uncertainty, which amounts to placing him under inhumane conditions of imprisonment and subjecting him to cruel, infamous and unusual treatment. The petitioners conclude that the fact that Mr. Teleguz must submit to a punishment of a secret nature, which he is unable to examine or challenge, violates Articles XVIII, XXIV, XXV and XXVI of the American Declaration.

14. With regard to the alleged violation of the right to consular notification set forth in Article 36 of the Vienna Convention on Consular Relations, the petitioners claim that Mr. Teleguz was detained, deprived of his liberty, arrested, tried and sentenced to death without having been informed about his right to contact Ukraine consular officers. Mr. Teleguz was also allegedly denied his right under a treaty between Ukraine and the United States, which requires that notice be given immediately to the relevant consular officials. According to the petitioners, this constitutes a violation of Mr. Teleguz’s rights under Articles XVIII and XXVI of the American Declaration.

15. Finally, the petitioners argue that Mr. Teleguz is being denied his effective right to seek clemency. In this regard, they claim that the power of granting pardons lies with the Governor of Virginia, who was the Attorney General in charge of the State’s efforts to execute him. Therefore, they conclude that this constitutes an unacceptable conflict of interest and renders it absolutely impossible for Mr. Teleguz to have a minimally fair clemency process or anything more than an empty formality.

B. Position of the State

16. The IACHR has not received any information or observations from the State regarding Mr. Teleguz’s petition.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

³ *Cullen v. Pinholster* 131 S. Ct. 1388 (2011).

⁴ *Ivan Teleguz v. Loretta Kelly* 2011 U.S. Dist. Lexis 83884 (W.D. Va., Aug. 1, 2011) at 103.

A. Competence

17. The petitioners are entitled, in principle, under Article 23 of the Rules of Procedure of the Commission, to file petitions before it. The petition identifies as the alleged victim an individual, for whom the United States has committed itself to respect and ensure the rights enshrined in the American Declaration. As to the State, the Commission notes that the United States is subject to the obligations imposed by the American Declaration pursuant to the OAS Charter, Article 20 of the Statute of the Commission and Article 51 of the Rules of Procedure of the Inter-American Commission. The United States has been a member of the Organization of American States since June 19, 1951, when it deposited the instrument of ratification of the OAS Charter.⁵ Consequently, the Commission is competent *ratione personae* to examine the petition.

18. Additionally, the Commission is competent *ratione loci* to hear the petition, inasmuch as violations of rights protected in the American Declaration are alleged to have taken place within the territory of the United States. The Commission is competent *ratione temporis* being that the obligation to respect and ensure the rights protected in the American Declaration was already in effect for the State on the date when the facts alleged in the petition presumably occurred. Lastly, the Commission is competent *ratione materiae*, because the petition charges potential violations of human rights protected by the American Declaration.

B. Admissibility Requirements

1. Exhaustion of domestic remedies

19. In accordance with Article 31(1) of the Rules of Procedure of the Inter-American Commission, for a petition lodged with the Commission to be admissible, domestic remedies must have been pursued and exhausted pursuant to generally recognized principles of international law. This requirement is aimed at enabling national authorities to hear the alleged violation of the protected right and, if appropriate, resolve the matter before it is heard by an international body.

20. According to the information available, after the death sentence was upheld on direct appeal, the Supreme Court of Virginia denied a state habeas petition and the United States District Court for the Western District of Virginia denied a federal habeas petition. The petitioners indicate that Mr. Teleguz has only one more non-discretionary appeal and that he will likely be executed in the spring of 2012. They argue that the alleged victim should not be required to wait until that appeal is heard before the IACHR can consider the petition given that there is no effective right to appeal in US federal habeas proceedings and that delaying consideration of the petition would effectively deny Mr. Teleguz any realistic prospect of having the alleged violations considered while he is still alive.

21. The requirement of exhaustion of domestic remedies does not mean that the alleged victims have the obligation to exhaust every possible remedy available to them. In this respect, the Inter-American Commission has maintained that "if the alleged victim endeavored to resolve the matter by making use of a valid, adequate alternative available in the domestic legal system and the State had an opportunity to remedy the issue within its jurisdiction, the purpose of the international legal precept is fulfilled."⁶ In the instant case, the State, through the direct appeal and the state and federal habeas petitions, had the opportunity to take cognizance of the alleged violations to the American Declaration.

22. Hence, the Commission concludes that the remedies under domestic law have been pursued and exhausted in accordance with Article 31(1) of the Commission's Rules of Procedure.

⁵ Also see, IA Court of HR, Interpretation of the American Declaration on the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights, OC-10.89, par. 45 (July 14, 1989).

⁶ IACHR, Report N° 70/04, Petition 667/01, Admissibility, Jesús Manuel Naranjo Cárdenas and others. Pensioners of the Venezuelan Aviation Company - VIASA, Venezuela, October 15, 2004, para. 52.

2. Timeliness of the petition

23. Article 32(1) of the Commission's Rules of Procedure requires that for a petition or communication to be admitted, it must be lodged within a period of six months from the date on which the party alleging the violation of his rights was notified of the final judgment. In the case under analysis, on August 1st, 2011, the United States District Court for the Western District of Virginia denied a habeas petition presented on behalf of Mr. Teleguz. The IACHR received the petition on November 2, 2011. The Commission therefore concludes that the present petition satisfies the requirement specified in Article 32(1) of its Rules of Procedure.

3. Duplication of proceedings and international *res judicata*

24. Nothing in the present file indicates that the subject of this petition is pending in any other international proceeding for settlement, or that it is substantially the same as another petition previously studied by the Inter-American Commission or by any other international organization. Hence, the requirements set forth in Article 33 of the IACHR Rules of Procedure have been met.

4. Colorable claim

25. Under Article 34(2) of its Rules of Procedure, the Commission must declare any petition or case inadmissible when it does not state facts that tend to establish a violation of the rights referred to in Article 27 thereof, in which case the petition is to be dismissed by virtue of the fact that it is "manifestly groundless" or "out of order", as provided in Article 34(b). The criterion for analyzing a petition's admissibility differs from the one used to analyze its merits, since in the admissibility phase the Inter-American Commission does only a *prima facie* analysis to determine whether a petition establishes the apparent or possible violation of a right guaranteed by the American Declaration. It is a preliminary analysis that does not imply any prejudgment or a preliminary opinion on the merits of the case.

26. The petitioners contend that defense counsel at trial missed significant favorable evidence and failed to investigate promising leads; that prosecutors withheld crucial evidence weakening their case and failed to correct testimony that they knew or ought to have known was false; and that strict procedural bars on the consideration of new evidence render the appeals process hollow and make it extremely difficult to correct errors made at trial. They further allege that the procedure for applying the lethal injection in the State of Virginia is confidential and subject to arbitrary amendment. The petitioners also state that Mr. Teleguz was detained, tried and sentenced to death without having been informed of the right to consular notification set forth in Article 36 of the Vienna Convention on Consular Relations.

27. Given the more rigorous scrutiny that the Commission has applied in death penalty cases,⁷ it observes that if proved, the petitioner's allegations could tend to establish violations of Articles I, XVIII, XXIV, XXV (regarding the allegations of inhumane treatment related to the method of execution) and XXVI of the American Declaration. The IACHR reiterates that it has an enhanced obligation to ensure that any deprivation of life which may occur through the application of the death penalty is in strict compliance with the applicable inter-American human rights instruments, including the American Declaration.⁸

⁷ According to the IACHR's established jurisprudence, it will review and decide capital punishment cases with a heightened level of scrutiny, to ensure that any deprivation of life that an OAS member state proposes to effect through the death penalty complies strictly with the requirements of the applicable inter-American human rights instruments. See IACHR, Report No. 117/11, Petition 12.341, Admissibility, James Wilson Chambers, United States, July 22, 2011, para. 25; IACHR, Report No. 116/11, Petition 12.333, Admissibility, Miguel Angel Flores, United States, July 22, 2011, para. 24; IACHR, Report No. 115/11, Petition 11.829, Admissibility, Pedro Luis Medina, United States, July 22, 2011, para. 31; IACHR Report No. 60/11, Petitions P-11.575 and others, Admissibility, Clarence Allen Lackey, United States, March 24, 2011, para. 158; and IACHR, Report No 61/03, Petition 4446-02, Admissibility, Roberto Moreno Ramos, United States, October 10, 2003, para. 66.

⁸ IACHR, Report No. 1/05, Case 12,430, Merits, Roberto Moreno Ramos, United States, January 28, 2005, para. 43.

28. With regard to the alleged violation of Article XXVII (Right of asylum) of the American Declaration, the Inter-American Commission observes that the petitioners offer no arguments concerning the violation of this provision. Hence, the IACHR cannot declare that claim admissible.

29. In conclusion, the IACHR decides that the petition is not manifestly groundless or out of order and declares that the petitioners have, *prima facie*, complied with the requirements established in Article 34 of the Commission's Rules of Procedure.

V. CONCLUSIONS

30. The Inter-American Commission concludes that it is competent to take cognizance of the present matter and that the petition is admissible under Articles 31 to 34 of its Rules of Procedure. Based on the arguments of fact and of law set forth herein and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the present petition admissible with respect to Articles I, XVIII, XXIV, XXV and XXVI of the American Declaration;
2. To declare the present petition inadmissible with respect to Article XXVII of the American Declaration;
3. To notify the parties of this decision;
4. To proceed to the analysis of the merits of the case; and
5. To publish this decision 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 20 day of the month of March, 2012.
(Signed): José de Jesús Orozco Henríquez, Presidente; Tracy Robinson, First Vice-President; Felipe González, Second Vice-President; Rodrigo Escobar Gil, Rosa Maria Ortiz and Rose-Marie Antoine, Commissioners.