

**REPORT No. 32/13<sup>1</sup>**  
PETITION 276-04  
ADMISSIBILITY  
SIEGFRIED JESUS DE LOS REYES VOMEND  
MEXICO  
March 21, 2013

**I. SUMMARY**

1. On April 5, 2004, the Inter-American Commission on Human Rights (hereinafter "the Commission," "the Inter-American Commission," or "the IACHR") received a petition filed by Parsifal de los Reyes and Siegfried Jesús de los Reyes Vomend (hereinafter "the alleged victim") against the United States of Mexico (hereinafter "the State," the "Mexican State," or "Mexico"). The petition alleges that the Mexican State is responsible for the illegal detention of the alleged victim, physical and psychological torture, and trial by a court lacking independence and impartiality.

2. The petitioners argue that the Mexican State is responsible for violating the rights enshrined in Articles 5(1), 5(2) (humane treatment), 7(3) (personal liberty), 11(1), 11(2) (protection of honor and recognition of dignity), and 8(1) (judicial guarantees) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention").

3. The State maintains that due process guarantees were observed in this case; therefore the allegations do not state facts that tend to establish a possible human rights violation. The State also argues that the petition is inadmissible because the petitioners are seeking to have the Commission act as a court of fourth instance.

4. After analyzing the parties' positions, without prejudging the merits of this case, and in keeping with the requirements established in Articles 46 and 47 of the American Convention, the Commission declares the case admissible so as to examine the alleged violation of the rights enshrined in Articles 5, 7, 8, and 25 of the American Convention, in conjunction with Article 1(1) of said international instrument, to the detriment of Siegfried Jesús de los Reyes Vomend. It also declares the petition admissible in relation to the alleged violations of the rights enshrined in Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture. The Inter-American Commission additionally declares that this petition is inadmissible with respect to the alleged violation of Article 11 of the American Convention. The Commission decides to report this decision to the parties, and to publish and include it in its Annual Report for the OAS General Assembly.

**II. PROCESS BEFORE THE COMMISSION**

5. On April 5, 2004, the Commission received the petition and assigned it number 276-04. On November 16, 2006, it forwarded the pertinent parts of the petition to the State and requested that the State submit its response within two months, in keeping with Article 30(2) of the IACHR's Rules of Procedure. On January 17, 2007, the State requested for an extension that was granted on January 22, 2007. The State presented its response on February 26 2007. Said communication was duly transmitted to the petitioners.

6. The IACHR received information from the petitioners on May 5, 2006; June 8, 2005; August 14, 2006; April 24, 2007; May 8, 2007; June 21, 2007; August 23, 2007; September 21, 2007; October 9, 2007; November 26, 2007; and August 16, 2012. Those communications were duly forwarded to the State.

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<sup>1</sup> In keeping with Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner José de Jesús Orozco Henríquez, of Mexican nationality, did not participate in the debate or decision in the instant case.

7. The IACHR received information from the State on July 3, 2007; July 23, 2007; September 10, 2007; December 3, 2012; and January 28, 2013. Those communications were duly forwarded to the petitioners.

### **III. THE PARTIES' POSITIONS**

#### **A. The petitioners**

8. The petitioners argue that on March 30, 2004, the alleged victim, an attorney by profession, was illegally detained, held incommunicado, subjected to physical and psychological torture and deprived of his liberty by state agents of Morelos to get him to desist in pursuing a matter that the alleged victims was prosecuting in the courts with respect to a report of the diversion of eight million dollars and several real properties that had compromised the then-Attorney General of Morelos (hereinafter "Attorney General of Morelos").

9. The petitioners argue that as a form of intimidation the then-Attorney General had falsified an accusation against the alleged victim for the crime of extortion. They note that the preliminary inquiry into extortion did not exist at the time of the detention, but to justify the illegal detention the authorities are said to have fraudulently simulated prosecutorial proceedings with earlier dates, as determined by the expert testimony on information technology for recovery of data erased from the computer used to capture the false proceedings.

10. According to briefs filed by the alleged victim, he was arrested by six state agents, without any judicial order, in the offices of the Superior Court of Justice of the State of Morelos while reviewing cases under his responsibility. He indicates that he was beaten and taken to the Office of the Attorney General for the state of Morelos, specifically to the office of the then-coordinator of the prosecutorial police, where he alleges he was severely tortured by members of this force, by the then-Attorney General and the then-Deputy Attorney General, until he lost consciousness. He notes that when he regained consciousness he continued receiving blows and was threatened that they would detain and rape his mother and sister, and that to prevent it he should sign some documents, or say the names of certain public figures to involve them. He also alleges that they stole his personal belongings and that a person who he did not know testified against him for committing a crime, allegations which he argues are false. Subsequently he was taken to the Office of the Deputy Prosecutor for Organized Crime, who he alleged beat him and placed his face in a plastic bag, which caused him asphyxia.

11. In response to the pre-trial detention order for the crime of extortion, the alleged victim was said to have filed judicial remedies, and on September 3, 2004, he was ordered released for lack of any basis to prosecute him. In the almost six months in which he was in prison, they indicate that the then- Attorney General of Morelos proposed that he exchange his freedom and the payment of US\$50,000 in exchange for him removing himself as legal counsel in the judicial proceeding that incriminated the Attorney General for diversion of funds.

12. They also indicate that on March 31, 2004, after a complaint filed by Irmgard Vomend, an inspector with the State Commission on Human Rights of Morelos (hereinafter "CEDH-MOR") examined Siegfried de los Reyes in the Office of the Attorney General for the State of Morelos, took a statement from him, and found injuries: "injuries presented have little likelihood of having been inflicted and are related due to their [illegible] to direct blows with blunt objects (feet, hands, [illegible], etc.)." In the briefs filed by the parties, one observes that the alleged victim said he had been diagnosed with injuries by the Third Criminal Court and by physicians from the "CERESO Morelos" hospital; due to the seriousness of the injuries, he allegedly had to be hospitalized almost a week.

13. In addition, the briefs filed by the petitioners before the IACHR included the report issued by medical examiner Dr. Eduardo Sánchez Lazo of March 31, 2004, in which he indicates: "at this moment of the exam he presents ecchymosis of purplish color that extends from the right flank to the epigastric region irregularly, referring to superficial pain ... ecchymosis with irregular form, purplish color located in the right kidney area, painful to the superficial touch, given its conditions it does not allow for performing a Giordano test, presents ader

[illegible] inflammatory reaction in the distal surface of the left forearm ... lesions with characteristics of those produced by pointed instruments, two in number, without any apparent vascular lesion, edema due to contusion [illegible] located on both thighs in the middle third and external anterior surface, ecchymosis purplish color located on the internal surfaces of both arms... Conclusions: 1. It is suggested that an abdominal ultrasound study be done urgently to discard visceral [illegible], abdominal, and/or retroperitoneal lesion."

14. As for the investigation of the alleged acts of torture, they indicate that in October 2004, the CEDH-MOR lodged a complaint with the Office of the Special Prosecutor for human rights violations of the Office of the Attorney General of the State of Morelos, against the state agents allegedly involved in the crimes of lesions, torture, kidnapping, illegal deprivation of liberty, and abuse of authority to the detriment of the alleged victim (DH/162/04-10). The petitioners argue that due to political pressures the Office of the Attorney General refused to include the pertinent part of the unsworn statement made to the prosecutor (*la indagatoria*) in the resolution of June 6, 2005, adducing that the body of the crime was not proven (DH/162/04-10). That resolution was said to have been challenged by the alleged victim; the first decision was confirmed in April 2006. On January 23, 2007, the First District Judge of the State of Morelos granted the writ of *amparo* filed by the alleged victim. On May 21, 2007, the motion for review filed by the alleged perpetrators of the acts of torture was resolved in their favor. According to the petitioners, the resolution failed to study the medical evidence that shows the torture.

15. They argue that based on what was reported to the IACHR, domestic remedies were exhausted.

#### **B. The State**

16. The State argues that the petition should be found inadmissible because domestically due judicial guarantees were guaranteed for the petitioner. In addition, it argues that the alleged victim was seeking to have the IACHR sit as a court of fourth instance.

17. According to the State, on March 30, 2004, Mr. de los Reyes was arrested and put at the disposal of the Public Ministry as the person likely responsible for the crime of extortion. On April 1, criminal charges were brought. That same day, in the presence of his attorney, he was informed of the crime of which he was accused, and the pre-trial detention order was issued (Preliminary Inquiry SDO/2/04-03). Dissatisfied with that resolution, the alleged victim filed writ of *amparo* 665/2004-IV; it was processed before the Third District Court of the State of Morelos. On May 31, 2004, that Court denied the *amparo* requested. It argues that in response to that determination the alleged victim filed a motion for review before the First Collegial Court of the 18<sup>th</sup> Circuit, which on September 2, 2004, ordered that the pre-trial detention order challenged be lifted and that another be issued in which it should be determined that the record lacked any evidence showing the crime of extortion. As a result, on September 3, 2004, the Third Judge for Criminal Matters of the First Judicial District of the State ordered his release for lack of a basis to prosecute, in favor of the alleged victim.

18. The State alleges that on March 31 2004, inspectors of the CEDH-MOR interviewed Mr. de los Reyes and were accompanied by a medical expert who certified the alleged victim's health, concluding that he presented lesions, with little likelihood of them having been self-inflicted. The CEDH-MOR opened complaint 196/2004 against public servants who were involved in his detention and recommended, among others to the Attorney General, that a preliminary inquiry be initiated against the public officials indicated. Accordingly the prosecutor assigned to the Office of the Special Prosecutor for Human Rights began the respective inquiry DH/2/162/04-10 for the crimes of torture, lesions, illegal deprivation of personal liberty, kidnapping, defamation, slander, robbery, specific fraud, harm, false statements to an authority, influence peddling, criminal association, abuse of authority, intimidation, abusive exercise of functions, procedural fraud, and false accusation, under exercise of public service, and crimes committed by state agents, to the detriment of Mr. Siegfried Jesús de los Reyes Vomend.

19. According to the State, on June 6, 2005, a decision was issued not to bring a criminal action based on the unsworn statement for lesions and other offenses. On November 18, 2005, the director of the Office of the Metropolitan Deputy Prosecutor ruled along the same lines. In response to that determination, on May 9,

2006, the alleged victim filed a writ of *amparo* (562/2006-D). On January 23, 2007, the First District Judge of the State of Morelos granted the *amparo* to Mr. de los Reyes, ordering that a new duly reasoned and justified resolution be issued.

20. According to the State, in decisions of February 9, 14, and 20, 2007, the president of the Third Collegial Court of the 18<sup>th</sup> Circuit admitted the motion for review filed by the state agents who allegedly perpetrated acts of torture in their capacity as third persons prejudiced in *amparo* proceeding 562/2006. In addition, the assenting motion for review filed by Mr. de los Reyes was admitted. On May 21, 2007, the court decided to overturn the judgment, dismiss *amparo* proceeding 562/2006-D, and not provide the benefit of a favorable *amparo* ruling or protection to Mr. de los Reyes, with respect to the resolution handed down on November 18, 2005, in preliminary inquiry DH/162/04-10.

21. According to the State, one can conclude that with that resolution the judicial branch decreed the legality of the determination not to bring a criminal action against the state agents against whom the petitioners' allegations were directed. In addition, it indicated that it was decided that based on the evidence-gathering steps in preliminary inquiry DH/2/162/04-10 the body of the crime was not shown.

22. As appears from the prosecutorial record, the State indicates that domestically all evidence has been weighted as well as the remedies invoked by the alleged victim before the courts, ensuring him due process. The alleged victim had a private attorney who pursued all avenues necessary for his defense. For that reason he does not find facts that, if true, would tend to establish a possible violation of human rights.

23. As regards the exhaustion of domestic remedies, the State indicates that the subject matter of the petition was resolved domestically by a Collegial Court that heard the motion for review in keeping with the international obligations arising from the American Convention. It indicates that the IACHR is not competent to find such a remedy as just or unjust given the subsidiary nature of the inter-American system. For that reason it considers that the petitioners seek to use the IACHR as a fourth instance.

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

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

24. In principle, the petitioner is authorized by Article 44 of the American Convention to submit petitions to the Commission. The petition identifies as the alleged victim Siegfried Jesús de los Reyes Vomend, with respect to whom the Mexican State has undertaken to respect and guarantee 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, the date on which it deposited its instrument of ratification. The Mexican State also ratified the Inter-American Convention to Prevent and Punish Torture on June 22, 1987. Therefore, the Commission is competent *ratione personae* to take cognizance of the petition, as it alleges violations of rights protected by the American Convention and the Inter-American Convention to Prevent and Punish Torture said to have occurred in Mexico, a state party to that treaty.

25. The Commission is competent *ratione temporis* insofar as the obligation to respect and guarantee the rights enshrined in the American Convention and the Inter-American Convention to Prevent and Punish Torture was in force for the State at the time that the facts are alleged to have occurred. Finally, the Commission is competent *ratione materiae* insofar as the petition alleges possible violations of human rights guaranteed by the American Convention and the Inter-American Convention to Prevent and Punish Torture.

##### **B. Exhaustion of Domestic Remedies**

26. Article 46(1)(a) of the American Convention provides that for a complaint submitted to the Inter-American Commission to be admissible in accordance with Article 44 of the Convention, one must have pursued and exhausted domestic remedies in accordance with generally recognized principles of international law. Article 46(2) of the Convention establishes three conditions in which the requirement to exhaust domestic remedies does not apply: (a) where the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights alleged to have been violated; (b) when the person alleging violations of his or her rights has been denied access to domestic remedies or has been prevented from exhausting them; (c) when there has been unwarranted delay in rendering a final judgment in the domestic courts.

27. According to the information submitted by the parties, there is no disagreement regarding the exhaustion of domestic remedies. Both parties agree that the last judgment corresponds to the motion for review in an *amparo* proceeding pursued by the alleged victim vis-à-vis the cessation of the authorities' prosecution of those allegedly responsible for the alleged acts of torture, lesions, illegal deprivation of liberty, among other acts.

28. The IACHR observes that in those cases in which there are allegations of torture, which is a crime actionable by the prosecutor as a matter of law, the adequate and effective remedy is normally an investigation and criminal prosecution, which the state is obligated to promote and give impetus to. The IACHR has stated on numerous occasions that "the authorities are obliged to conduct a thorough criminal investigation calculated to clarify the facts and determine blame."<sup>2</sup>

29. In the instant case, the IACHR observes that on June 6, 2005, a final decision was issued not to prosecute based on the unsworn statement made to the prosecutorial authorities, and on November 18, 2005, the director of the Office of the Metropolitan Deputy Prosecutor made a ruling along the same lines. In response to that decision, the alleged victim filed a writ of *amparo* which received a favorable ruling on May 9, 2006 by the First District Judge for the State of Morelos. In response to a writ of *amparo* filed by the persons accused of the alleged torture, the Third Collegial Court of the 18<sup>th</sup> Circuit overturned the judgment on review, did not grant Mr. de los Reyes relief under his writ of *amparo*, and dismissed the *amparo* proceeding.

30. Considering that the last judgment known to the IACHR is that handed down on May 21, 2007, on a motion for review, and that the State has not contested that assertion, the IACHR is of the view that domestic remedies have been exhausted. According to the available information, and considering that in cases of alleged facts actionable by the public prosecutor, as indicated earlier, the authorities should carry out an effective criminal investigation to clarify the facts and determine responsibilities, the Commission finds that the alleged failure to investigate the alleged acts of torture requires an analysis of the merits.

## **2. Time for filing the petition**

31. Article 46(1)(b) of the Convention establishes that for a petition to be declared admissible, it must be presented within six months of the date on which the interested person was notified of the final decision that exhausted domestic remedies.

32. The Commission finds that in the instant case domestic remedies have been exhausted since May 21, 2007. The petition was submitted on April 5, 2004, therefore this requirement has also been satisfied.

## **3. Duplication of procedures and international *res judicata***

33. It does not appear from the record that the subject matter of the petition is pending any other international procedure for settlement, nor that it is substantially the same as one previously studied by the Commission or any other international organization. Therefore, the requirements established in Articles 47(1)(c) and 47(d) of the Convention have been satisfied.

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<sup>2</sup> IACHR. Report No. 14/06 (Admissibility), Raquel Natalia Laguna and Sergio Sorbellini, Argentina, March 2, 2006. para. 44.

#### 4. Characterization of the facts alleged

34. The Commission considers that at this stage of the proceeding it is not appropriate to decide whether or not the purported violations to the detriment of the alleged victim occurred. For the purposes of determining admissibility, the IACHR should only determine whether the facts stated tend to establish a violation of the American Convention, as stipulated in Article 47(b) of the Convention, and whether the petition is “manifestly groundless” or “obviously out of order,” as per Article 47(c) of the Convention.

35. Neither the American Convention nor the IACHR’s Rules of Procedure require the petitioners to identify the specific rights allegedly violated by the state in a case submitted to the Commission, although 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 applies and can be found to have been violated if the facts alleged are proven by means of sufficient evidence and legal argument.

36. Regarding the State’s claims of a possible fourth instance, the IACHR reiterates that it is competent to declare a petition admissible and rule on its merits when it refers to a domestic judicial decision made with respect for due process or that appears to violate any other right guaranteed by the Convention. If, on the other hand, the petition merely asserts that the ruling was incorrect or contains errors under domestic law, the petition should be rejected in keeping with the fourth instance formula.<sup>3</sup>

37. The petitioners in this case have made allegations regarding the alleged illegal detention and torture committed against Mr. Siegfried Jesús de los Reyes Vomend. The IACHR considers that the facts alleged tend to establish violations of the rights guaranteed in Articles 5 and 7 of the American Convention, in connection with Article 1(1) of said international instrument, to the detriment of Siegfried Jesús de los Reyes Vomend. The IACHR would also analyze the allegations of deficiencies in the investigation of this case in relation to the guarantees established in Articles 8 and 25 of the Convention. The IACHR also decides to find the case admissible in relation to the alleged violation of the rights enshrined in Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture. The petitioners have not submitted sufficient information to tend to establish possible violations of Article 11.

#### V. CONCLUSIONS

38. The Commission concludes that it is competent to hear this case on the merits and that the petition is admissible in accordance with Articles 46 and 47 of the American Convention, and decides to continue its analysis of the merits in relation to the alleged violation of Articles 5, 7, 8, and 25 of the American Convention, in connection with Article 1(1) of said international instrument, to the detriment of Siegfried Jesús de los Reyes Vomend. Additionally, the IACHR finds the case admissible to examine the alleged violation of the rights enshrined in Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

39. Based on the foregoing arguments of fact and law,

#### THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

##### DECIDES:

1. To declare the petition admissible insofar as it refers to alleged violations of the rights recognized in Articles 5, 7, 8, and 25 of the American Convention, in connection with Article 1(1) of said international instrument, to the detriment of Siegfried Jesús de los Reyes Vomend, and to declare the petition admissible on the alleged violation of the rights enshrined in Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Sanction Torture.

<sup>3</sup> See IACHR, Report No. 39/96, Case 11,673, *Santiago Marzioni* (Argentina), October 15, 1996, para. 51; IACHR, Report No. 40/06, Case 11,214, *Pedro Velásquez Ibarra* (Argentina), March 15, 2006, para. 52.

2. To declare the petition inadmissible insofar as it refers to alleged violations of the rights enshrined in Article 11 of the American Convention.

3. To notify the parties of this decision.

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

Done and signed in the city of Washington, D.C., on the 20th day of March 2013. (Signed);; President; Tracy Robinson, First Vice-President; Rosa María Ortiz, Second Vice-President, Felipe González, Dinah Shelton, Rodrigo Escobar Gil, and Rose-Marie Belle Antoine, Commissioners.