

REPORT No. 80/13¹
PETITION P-1278-13
ADMISSIBILITY
ROBERT GENE GARZA
UNITED STATES
September 16, 2013

I. SUMMARY

1. On August 7, 2013, the Inter-American Commission on Human Rights (hereinafter, “the Inter-American Commission” or “the IACHR”) received a petition lodged by the Association of Humanitarian Lawyers (hereinafter, “the petitioners”) against the United States of America (hereinafter, “the United States” or “the State”). The petition was submitted on behalf of Robert Gene Garza (hereinafter, “the alleged victim” or “Mr. Garza”) who is deprived of his liberty on death row in the state of Texas.

2. The petitioners submit that the prosecution of Mr. Garza did not comply with due process norms, and more particularly that the authorities did not seek adequate testing for mental disabilities, and that the interrogation and confession indicate possible violations of the rights to fair trial and to due process of law. Likewise, the petitioners state that there was ineffective assistance of court-appointed counsel; they allege in this regard that there was essentially no introduction of mitigating evidence. The Commission requested an expedited response from the United States given that a date for execution had been set for September 19, 2013. 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 set forth in Articles I (right to life, liberty and personal security), XVIII (right to a fair trial), XXV (right to 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 August 7, 2013. On the 14th of that month, the Commission forwarded the pertinent parts to the State, granting it a three week period in which to submit its observations as provided for in Article 30(4) of the Commission’s Rules of Procedure. On August 15 and 22, and September 9, 2013, the petitioners sent additional information, which was duly forwarded 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.

Precautionary Measures

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.

5. In addition to the petition, the petitioners also requested precautionary measures to suspend the execution of Mr. Garza. On August 16, 2013, the Inter-American Commission adopted Resolution 1/2013 requesting the Government of the United States to abstain from executing Mr. Garza until it has ruled on the merits of the petition.²

III. POSITION OF THE PARTIES

A. Position of the petitioners

6. The petitioners state that Mr. Garza is one of four persons accused of participating in the murder of four women in a trailer park on September 5, 2002 in Donna, Texas. According to the information available, in January 2003 Mr. Garza was indicted in Hidalgo County, Texas, on four counts of capital murder. A jury convicted the alleged victim, and after a separate punishment hearing, he was sentenced to death. The Texas Court of Criminal Appeals affirmed both the conviction and sentence.³ While the direct appeal was pending, Mr. Garza filed an initial application for a writ of habeas corpus in the state trial court. Following a live evidentiary hearing, the trial court entered findings of fact and conclusions of law recommending that the alleged victim's application be denied. The Court of Criminal Appeals accepted these findings and denied relief.⁴

7. At the federal level, petitioners mention that their appeal was denied by the United States District Court for the Southern District of Texas, McAllen Division. The Federal Appeals Court for the 5th Circuit also denied Mr. Garza's appeal. On February 19, 2013, the United States Supreme Court denied certiorari. The execution of Mr. Garza is scheduled to take place on September 19, 2013.

8. The petitioners allege that "there are serious human rights issues at stake" in Mr. Garza's case. They assert that the alleged victim has a mental disability; that the interrogation and confession indicate possible violations of the rights to fair trial and to due process of law; and that court-appointed counsel provided ineffective assistance.

9. Regarding the first allegation, the petitioners submit that Mr. Garza was placed in special education classes in school and that his mother apparently gave many of the school records to the court-appointed attorney. However, the authorities allegedly did not seek adequate testing for mental disabilities "in spite of the fact that it was apparent that [Mr. Garza] was seriously limited in his ability to read and write at the time that a confession was taken."

10. Further, petitioners state that the Courts have been indecisive as to what IQ level is sufficient to invoke the standards set forth in *Atkins*.⁵ They urge that "Courts should look at the totality of the circumstances of a person, as a person may have relatively low mental functioning and mental conditions such as apparently Mr. Garza has, that in combination should bar the death penalty."

² IACHR, Resolution 1/2013, Precautionary Measure No. 255-13, Robert Gene Garza, United States of America, August 16, 2013. Available at: <http://www.oas.org/en/iachr/decisions/pdf/pmres1-2013.pdf>

³ *Garza v. State*, 213 S.W.3d 338, 341-44 (Tex. Crim. App. 2007).

⁴ Exhibit No. 5 (brief filed by Greg Abbott, Attorney General of Texas, in *Robert Gene Garza, v. Rick Thaler*, Civil Action No. M-09-CV-258, on April 15, 2010).

⁵ *Atkins v. Virginia*, 536 U.S. 304 (2002).

Petitioners allege that Mr. Garza's rights under Articles I and XXVI of the American Declaration "would be violated if he were to be executed unless it can be established that he is not mentally disabled."

11. With regard to the right to fair trial and to due process of law, the petitioners contend that Mr. Garza was arrested on January 24, 2003, and that he was interrogated until he signed a confession on January 26, 2003. According to the petition, although the alleged victim asked for counsel, the interrogation continued. In addition, Mr. Garza purportedly signed the confession because the authorities told him that was the only way he could have contact with his common law wife, who allegedly was in great danger.

12. The petitioners further state, *inter alia*, that the confession is inconsistent with the way Mr. Garza would have expressed himself. In this regard, the petitioners indicate that, "rather than a statement by a then semi-literate Spanish speaking person [the confession] sounds suspiciously like a police report." Also, they notice that Mr. Garza's signatures and initials are inconsistent in appearance. According to the petitioners, these facts indicate possible violations of Articles XVIII and XXVI of the American Declaration.

13. Regarding the allegation of ineffective assistance of court-appointed counsel, the petitioners contend that the attorney did not seem to have had much contact with the alleged victim "and apparently had not really studied the confession." They assert that this is first apparent from the record of the August 11, 2003 hearing on the Motion to suppress the confession. The attorney allegedly limited the suppression hearing merely to the issue of voluntariness rather than all issues, especially that of veracity. Also, he purportedly never raised the issue of the language, or of what they allege are serious factual discrepancies such as the misidentification of the scene of the murders or the weapons used.

14. In addition, the petitioners state that, although some experts and others were consulted for mitigation purposes, there was essentially no introduction of mitigating evidence. In this regard, they assert that there is no record of attempts to contact friends, teachers, clergy or others who may have had information that could have been presented as mitigating factors.

15. Finally, the petitioners claim that "Mr. Garza appears to be ill-represented at every stage of the proceedings before Texas and Federal authorities."⁶ In this respect, they allege that in the clemency application there is not any discussion of the serious discrepancies between the confession and the actual facts. The petitioners conclude that the ineffective assistance of court-appointed counsel violates Mr. Garza's rights under Articles II, XVII and XVIII of the American Declaration.

16. According to a press release calling for clemency in Mr. Garza's case submitted by the petitioners and forwarded to the State,⁷ the alleged victim was convicted and sentenced to death under the Law of Parties.⁸ Mr. Garza was allegedly not present at the murders and no physical evidence ties

⁶ Communication submitted by the petitioners on September 9, 2013.

⁷ Communication presented by the petitioners on August 22, 2013 ("Clemency urged for Texas man facing execution and sentenced under the Law of Parties," Livingston, Texas, August 20, 2013). Available at: <http://lostinthesystemusa.wordpress.com/2013/08/22/press-release-re-robert-garza/>

⁸ Texas Penal Code § 7.02 (Criminal responsibility for conduct of another).

(a) A person is criminally responsible for an offense committed by the conduct of another if: (1) acting with the kind of culpability required for the offense, he causes or aids an innocent or nonresponsible person to

him to the crime. The press release states that Mr. Garza always maintained that he did not kill anyone and that physical evidence and witness testimony support this claim. Also, no one else was purportedly ever prosecuted or convicted in this Law of Parties case. It further states that Texas prosecutors and the Courts are dangerously abusing the application of the Law of Parties and that Texas is the only State in the country to apply it to capital cases.

17. With regard to the exhaustion of domestic remedies, the petitioners indicate that the United Supreme Court denied certiorari on February 19, 2013 and that there are no further legal remedies open to Mr. Garza in United States courts. On September 9, 2013, they informed the IACHR that a clemency application was submitted by Mr. Garza's appeals attorney before the state authorities.

B. Position of the State

18. The IACHR has not received any information or observations from the State regarding Mr. Garza's petition.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

A. Competence

19. 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 set forth through the American Declaration, the OAS Charter, Article 20 of the Statute of the IACHR and Article 51 of its Rules of Procedure. 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.⁹ Consequently, the IACHR is competent *ratione personae* to examine the petition.

20. Additionally, the Inter-American 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 IACHR is competent *ratione temporis* given 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 Inter-American Commission is competent *ratione materiae*, because the petition charges potential violations of human rights protected by the American Declaration.

engage in conduct prohibited by the definition of the offense; (2) acting with intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense; or (3) having a legal duty to prevent commission of the offense and acting with intent to promote or assist its commission, he fails to make a reasonable effort to prevent commission of the offense.

(b) If, in the attempt to carry out a conspiracy to commit one felony, another felony is committed by one of the conspirators, all conspirators are guilty of the felony actually committed, though having no intent to commit it, if the offense was committed in furtherance of the unlawful purpose and was one that should have been anticipated as a result of the carrying out of the conspiracy.

⁹ See also, 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).

B. Admissibility Requirements

1. Exhaustion of domestic remedies

21. In accordance with Article 31(1) of the Rules of Procedure of the Inter-American Commission, for a petition 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 take cognizance of the alleged violation of the protected right and, if appropriate, resolve the matter before it is heard by an international body.

22. According to the information available, after the conviction and sentence were upheld on direct appeal, the Court of Criminal Appeals denied relief. At the federal level, the United States District Court for the Southern District of Texas and the Federal Appeals Court for the 5th Circuit also denied Mr. Garza's appeal. On February 19, 2013, the United States Supreme Court denied certiorari. Mr. Garza is scheduled to be executed on September 19, 2013. Further, according to the allegations of the petitioners and the documents submitted, Mr. Garza raised the three allegations brought before the Inter-American Commission at the domestic level.¹⁰

23. Hence, the IACHR concludes that the remedies under domestic law have been pursued and exhausted in accordance with Article 31(1) of its Rules of Procedure.

2. Timeliness of the petition

24. Article 32(1) of the IACHR'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, the United States Supreme Court denied certiorari on February 19, 2013. The IACHR received the petition on August 7, 2013. The Inter-American 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*

25. 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

26. 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

¹⁰ Supplemental statement submitted by the petitioners to the IACHR on August 15, 2013 and Exhibit No. 5 (brief filed by Greg Abbott, Attorney General of Texas, in Robert Gene Garza, v. Rick Thaler, Civil Action No. M-09-CV-258, on April 15, 2010).

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.

27. The Inter-American Commission's Rules of Procedure do not 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 IACHR, based on the inter-American system's jurisprudence, to determine in its admissibility report which provisions of the relevant instruments are applicable and could be found to have been violated if the alleged facts are proven by sufficient elements.

28. The petitioners contend that Mr. Garza has a mental disability; that the interrogation and confession indicate possible violations of the rights to fair trial and to due process of law; and that the court-appointed counsel assigned to him provided ineffective assistance. Also, according to the information submitted by the petitioners, Mr. Garza was sentenced to death under the Law of Parties and no physical evidence allegedly ties him to the crime.

29. Given the more rigorous scrutiny that the Inter-American Commission has applied in death penalty cases,¹¹ it observes that if proven, the petitioners' allegations could tend to establish violations of Articles I, XVIII, XXV (final paragraph - regarding the alleged mental disability) 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.¹²

30. On the other hand, the IACHR observes that the petitioners have not sufficiently substantiated their allegations so as to permit the Commission to determine, for the purposes of the admissibility of this petition, that the facts tend to establish *prima facie* violations of Article XVII (Right to recognition of juridical personality and civil rights) of the American Declaration. The allegations with respect to this provision are therefore inadmissible in conformity with Articles 34(a) and (b) of the Inter-American Commission's Rules of Procedure.

31. 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

32. 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.

¹¹ 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. 73/12, Petition 15-12, Admissibility, Edgar Tamayo Arias, United States, July 17, 2012, para. 47; IACHR, Report No. 117/11, Petition 12.341, Admissibility, James Wilson Chambers, United States, July 22, 2011, para. 25; and IACHR, Report No. 61/03, Petition 4446-02, Admissibility, Roberto Moreno Ramos, United States, October 10, 2003, para. 66.

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

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, XXV and XXVI of the American Declaration;
2. To declare the present petition inadmissible with respect to Article XVII 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.

Approved by the Inter-American Commission on Human Rights on the 16th day of the month of September, 2013. (Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Rosa Maria Ortiz, Second Vice-President; Felipe González, Rodrigo Escobar Gil, and Rose-Marie Antoine, Commissioners.