

OEA/Ser.L/V/II.153
Doc. 9
6 November 2014
Original: Spanish

REPORT No. 93/14
PETITION 691-08
REPORT ON ADMISSIBILITY

JAVIER VILLANUEVA MARTINO ET AL.
BOLIVIA

Approved by the Commission at its session No. 2013 held on November 6, 2014
153 Regular Period of Sessions

Cite as: IACHR, Report No. 93/14, Petition 691-08. Admissibility. Javier Villanueva Martino.
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ADMISSIBILITY
JAVIER VILLANUEVA MARTINO AND OTHERS
BOLIVIA
NOVEMBER 6, 2014

I. SUMMARY

1. On June 11, 2008, the Inter-American Commission on Human Rights (hereinafter also “the Commission” or “the IACHR”) received a petition lodged by Javier Villanueva Martino (hereinafter also “the petitioner” or “the alleged victim”) alleging the violation by the Plurinational State of Bolivia (hereinafter also “Bolivia” or “the State”) of the rights enshrined in Articles 5, 7, 8, and 25 of the American Convention on Human Rights (hereinafter also “the American Convention” or “the Convention”) and of the rights enshrined in Articles 6, 8, and 9 of the Inter-American Convention to Prevent and Punish Torture. The petitioner, a Spanish national residing in Bolivia, stated that on April 28, 2004, in the city of Santa Cruz de la Sierra, he was detained by security agents of the State who tortured him to extract a confession for a crime he did not commit, and that the confession was filmed by the police and then presented to the media. According to the petitioner’s claims, he was then placed in preventive custody for an excessive period of time and held in prison in inhumane conditions, while he faced criminal prosecution in a trial that violated his guarantees of due process and his right to judicial protection and in which, in spite of his acquittal, his personal liberty continued to be violated for more than a year with the imposition of a judicial confinement order.

2. The petitioner claimed that his right to humane treatment and to freedom from torture and cruel, inhuman, and degrading treatment was violated, in that he was subjected to beatings, electric shocks, and other forms of mistreatment at the hands of the State’s security forces, in order to secure a confession that he ultimately did give as a result of that coercion. He further claimed that his arrest was arbitrary, that he was later held in preventive custody for a period longer than allowed by law, and that he was then forced to share his home with police officers for the duration of his house arrest. In addition, he contended that his right to freedom was violated with the imposition of a judicial confinement order following his acquittal. The petitioner also claimed that his right to a fair trial was violated, in that the State failed to uphold his right to the presumption of innocence, his right of defense, his right to be tried by a competent court, his right to consular assistance as a Spanish citizen arrested in a foreign country, and his right to be tried within a reasonable time. Moreover, he claimed that his right to judicial protection was violated in that no investigation has been conducted into the acts of torture to which he was subjected, and that he was unable to pursue civil action to establish responsibility for the harm that he suffered.

3. For its part, the State maintains that the petition should be declared inadmissible because the petitioner failed to exhaust the domestic remedies with respect to his allegations of torture, and because he also failed to allege any exceptional condition that would have prevented him from exhausting them. It stated that the petitioner did not file a report or complaint before the Public Ministry [*Ministerio Público*], limiting himself to filing a complaint of torture when he was brought before a judge after his arrest, as well as during the hearing on precautionary measures, and through the complaint lodged by his father with the Office of the Ombudsman of the People [*Defensoría del Pueblo*] of Santa Cruz. The State further asserts that the petitioner failed to file his petition within a reasonable period of time, given that the national courts handed down an acquittal—of which the parties were given notice on March 25, 2006, and which became final on December 13, 2007—for acts that took place in 2004, and that the petitioner did not avail himself of the international proceedings until June of 2008. Moreover, the State maintained that the claim for damages that the petitioner is making in his international case must be dismissed, given that he could have filed a civil suit for damages, but did not. Finally, the State affirms that the IACHR lacks jurisdiction *ratione temporis* to examine the obligation to investigate and punish the alleged torture under the Inter-American Convention to Prevent and Punish Torture because the acts were alleged to have taken place in April 2004, and Bolivia deposited its ratification instrument on November 21, 2006.

4. After examining the parties' positions in light of the admissibility requirements set out in Articles 46 and 47 of the American Convention, the Commission concluded that it was competent to hear the claim and that the petition was admissible as regards the alleged violation of the rights enshrined in Articles 5, 7, 8, 11, 22, and 25 of the American Convention, in conjunction with Article 1.1 thereof, and as regards Articles 6 and 8 of the Inter-American Convention to Prevent and Punish Torture. In addition, the Commission decided to notify the parties of this Report on Admissibility, to publish it, and to include it in its Annual Report.

II. PROCEEDINGS BEFORE THE COMMISSION

5. On June 11, 2008, the initial petition was received and registered as No. 691-08. On September 30, 2009, in compliance with Article 30 of its Rules of Procedure then in force, the Commission forwarded the relevant parts of the petition and additional communications to the State and asked it to return its reply within the following two months. On November 13, 2009, the State requested an extension for the presentation of its comments; that request was granted by the Commission on December 9 of that year, with January 5, 2010, set as the new deadline. On January 11, 2010, the State again requested an extension of the deadline for returning its comments. On January 26, 2010, in accordance with Article 30.3 of its Rules of Procedure then in force, the Commission decided not to grant the second extension and resolved to continue with its processing of the complaint and to ask the State to submit its comments as soon as possible. On October 10, 2012, the State sent a communication regarding this case in which it requested that the address for notifications related to it be changed to that of the office of the Attorney General of the State (PGE), however, at such moment it did not present observations on the admissibility of the petition.

6. During the 150th session, the IACHR adopted Admissibility Report No. 15/14 which was notified to the parties on May 2, 2014. On August 26, 2014 the State submitted a letter indicating that, contrary to what is stated in the report, the State had submitted observations regarding the admissibility of the petition. In this regard the State submitted a copy of a document it had sent to the Commission, dated April 8, 2010, and marked with a stamp of receipt at the Commission of 12 April 2000. The Commission had no record of that document in the physical file or in its digital files, and it is unclear for what reason the date indicated on the receipt stamp does not match the date of the document in question, but takes into account the possibility of an inadvertent error in its reception and registration. The Commission accepted in good faith the State's response and therefore proceeded to analyze the requirements of Articles 46 and 47 of the American Convention, taking these observations into account. On the basis of that analysis, the Commission has adopted the present report.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioners

7. The petitioner claims that his right to humane treatment and to freedom from torture and cruel, inhuman, and degrading treatment was violated when, as he contends, on April 28, 2004, while the city of Santa Cruz de la Sierra, Bolivia, state security agents bundled him into a car, where they beat him, covered his head with plastic bags soaked in a toxic liquid, throttled him, bound him and hung him from his hands to cut off his circulation, repeatedly aimed a weapon at him and threatened to kill him, while applying electric shocks to his genitals, to get him to confess to having placed a bomb in the car of a prosecutor who had recently been murdered. He was then taken to an official location of the state security forces, from where he was transferred to the Palmasola and Chonchocrito prisons, where he claims he was kept in inhuman detention conditions and held in preventive custody for more than 19 months. In addition, the petitioner claims that all the human rights violations he suffered had a severe emotional and psychological impact on his partner and his immediate family, in violation of their right to humane treatment.

8. The petitioner also claims that his right to personal liberty was violated in that, according to his contentions, he was arrested without a court order or being caught *in flagrante delicto*; he was not informed of the reason for his arrest or of his rights; and he was not supplied with an attorney during his questioning. Similarly, he claims that his arrest was not registered until two days after it had occurred and so,

meanwhile, he was unable to pursue habeas corpus relief. In addition, he states that the legally established limit of 18 months for the maximum duration of preventive custody was violated since, according to his claims, he was held for 19 months and 16 days before being granted house arrest while his legal situation was resolved. Finally, he contends that his right to personal liberty was violated since, according to his claims, during the time he was under house arrest, the police officers guarding him lived in his apartment with him and his companion, and after his acquittal and the dismissal of the appeals filed against that judgment, a judicial confinement order was placed on him whereby he was unable to leave the country, even though Bolivia's Code of Criminal Procedure prohibits such measures.

9. The petitioner also contends that his right to a fair trial was violated. He claims he was not judged by a competent court, in that when he filed for habeas corpus relief, the motion was decided by a chamber presided over by the father of the prosecutor for whose murder he was charged, and because after he had denounced the prosecutor who issued the warrant for his arrest, the same prosecutor continued to represent the Public Prosecution Service in his criminal trial. He further maintains that in spite of his requests, the State did not notify the Spanish consular authorities regarding his arrest and criminal prosecution, which also constituted a violation of his right of due process.

10. The petitioner also claims that his right to be tried within a reasonable time was violated. He indicates that the Bolivian Code of Criminal Procedure states that criminal proceedings shall take no longer than three years; however, his trial exceeded that maximum period by more than seven months, in that he was arrested in April 2004 and his acquittal in the criminal trial was only finalized on December 13, 2007.

11. The petitioner further alleges a violation of the presumption of innocence, through both the excessive duration of his preventive custody and his allegedly being forced to share his home with the police when he was placed under house arrest; through the lengthy duration of the judicial confinement order imposed on him, which prevented him from leaving the country; and through the media's reporting of the recording in which he admitted his guilt in the prosecutor's murder, although that video was allegedly recorded under coercion. Finally, the petitioner claims that his right of defense was violated in that, as he contends, he was interrogated without having an attorney present; that he was tried in proceedings that upheld the validity of the confession he gave under coercion and without a prosecutor or his defense counsel being present; and finally, that he was purportedly coerced into confessing through torture.

12. Finally, the petitioner claims that his right to judicial protection was violated, since, as he contends, no judicial investigation was opened into the acts of torture he suffered, and he has also been prevented from filing a civil suit for the alleged harm the State caused him because, according to his claims, the only procedure that exists is restricted to seeking compensation for individuals whose trials are reviewed after the existence of a miscarriage of justice has been established.

B. Position of the State

13. The State indicates that the petition should be declared inadmissible because the domestic remedies were not exhausted with respect to the allegations of torture, said to have occurred in 2004, and because the petitioner also failed to make any argument to support the impossibility of exhausting them. In this respect, it states that the alleged victim did not file any report or complaint before the Public Ministry, limiting himself to complaining of the alleged acts in the statement he gave after his arrest, as well as during the hearing on the precautionary measure, and through the complaint that his father lodged with the Office of the Ombudsman of the People of Santa Cruz. It asserts that the "national courts delivered a judgment of acquittal, of which Mr. Villanueva received notice on March 25, 2006, and therefore the simple complaint to the Office of the Ombudsman of the People is not of sufficient merit for purposes of opening an international proceeding."

14. The State additionally asserts that, even in the event that the IACHR finds that there is an applicable exception to the exhaustion of domestic remedies requirement, it should declare that the petition was not filed within a reasonable period of time according to Article 32(2) of the Commission's Rules of Procedure, as 49 months had elapsed between the acts that allegedly took place and the date in which the

petition was filed with the IACHR, and 71 months had passed between the commission of the acts and the State's 2010 reply.

15. With respect to the criminal prosecution of the alleged victim, the State asserts that the national courts issued a judgment of acquittal that became final on December 13, 2007 with the decision of the Second Criminal Chamber of the Supreme Court, and therefore it was incumbent upon the alleged victim to seek compensation in a civil suit. The State maintains that there are domestic judicial proceedings for obtaining civil redress, and therefore it is improper for the petitioner to have availed himself of this international proceeding in order to seek compensation.

16. Finally, the State affirms that the IACHR lacks jurisdiction *ratione temporis* to examine the alleged violations of the Inter-American Convention to Prevent and Punish Torture because the acts of torture were alleged to have taken place on April 24, 2004, and Bolivia deposited its instrument of ratification with the OAS Secretariat on November 21, 2006.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

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

17. The petitioner is entitled, under Article 44 of the Convention, to present complaints alleging violations of the rights contained in that instrument. The alleged victim in the case was under the jurisdiction of the State of Bolivia at the time of the incidents in question. For its part, Bolivia ratified the American Convention on July 19, 1979. Consequently, the Commission has competence *ratione personae* to examine the petition.

18. The Commission is competent *ratione loci* to hear the petition, since it contains allegations of violations of rights protected by the American Convention that allegedly took place within the territory of Bolivia, which is a state party to that treaty.

19. In addition, the Commission has competence *ratione temporis*, since the general obligation of respecting and ensuring the rights protected by the American Convention was already in force for the State on the date on which the incidents described in the petition allegedly occurred.

20. Finally, the Commission has competence *ratione materiae*, because as explained in paragraphs 34 to 37 below, the petition alleges facts that could tend to establish violations of rights protected by the American Convention on Human Rights.

21. Regarding its competence to rule on violations of the Inter-American Convention to Prevent and Punish Torture, the IACHR notes that Bolivia has been a state party to that instrument since July 27, 2006, the date on which it deposited its ratification. Given that the facts on which this case is based occurred between April 2004 and December 2007, the IACHR is competent *ratione temporis* to examine the acts of torture and cruel, inhuman, and degrading treatment that allegedly took place between April 2004 and July 26, 2006, using the American Convention as the applicable source of law. Nevertheless, the IACHR notes that for events taking place after November 21, 2006, the date of ratification cited above, or for those that could be considered an ongoing violation of rights continuing after that date, the Inter-American Commission has competence *ratione temporis* to examine this petition under both the American Convention and the Inter-American Convention to Prevent and Punish Torture.

B. Exhaustion of domestic remedies

22. Article 46.1.a of the American Convention states that for a complaint lodged with the Inter-American Commission in compliance with Article 44 of the Convention to be admissible, the remedies available under domestic law must have first been pursued and exhausted in accordance with generally recognized principles of international law. That requirement is intended to facilitate the domestic authorities'

examination of the alleged violation of a protected right and, if appropriate, to enable them to resolve it before it is brought before an international venue.

23. The petitioner claims that he exhausted the domestic remedies, since the judgment that acquitted him of the crime of murder became final on December 13, 2007. He further indicates that although he informed the authorities of the alleged acts of torture committed against him as early as April 2004, no judicial investigation was ever opened into those allegations. Finally, he adds that he pursued no civil action for damages since Bolivia offers no procedure for compensating people arrested and then acquitted, with the exception of those whose trials are reviewed following the determination of a miscarriage of justice.

24. For its part, the State alleges the failure to exhaust domestic remedies with respect to the claims of torture because the alleged victim did not file a report or a criminal complaint before the Public Ministry. The State additionally alleges the failure to exhaust domestic remedies with respect to the claim for damages, in view of the fact that the alleged victim did not bring a civil action for the recovery of damages, even though it was available to him in the national legal system.¹

25. With respect to the petitioner's allegations of having been subjected to torture and cruel, inhuman, and degrading treatment during his detention, the Commission observes that the petitioner had reported the alleged acts to a judge on April 28, 2004, and that the Office of the Ombudsman of the People of Bolivia issued a resolution on September 20, 2004, recommending that the Departmental Police Commander of Santa Cruz open a criminal investigation against the public servants who had arrested him, and that the Office of the District Prosecutor of Santa Cruz open an investigation as well. According to the information received, the State did not open a criminal investigation into the alleged acts of torture. According to the precedents set by the Commission and by the Inter-American Court, any time an offense is committed that may be prosecuted *sua sponte*, the State has the obligation to initiate and move forward with the criminal case and that, in such cases, that is the proper way to determine the facts, prosecute the perpetrators, and establish the appropriate criminal penalties, as well as to enable other forms of redress. Thus, the investigation in cases that may be prosecuted *sua sponte* "must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government."² In view of the above, the Commission concludes that the exception to the exhaustion of domestic remedies requirement provided for in Article 46.2.b is applicable.

26. In addition, the State has argued that the alleged victim failed to exhaust the remedy of civil litigation to obtain redress for possible human rights violations. The Commission reiterates that, for purposes of the admissibility requirements, this does not constitute a remedy whose exhaustion is required, because it

¹ Article 95 of the Bolivian Criminal Code states:

[...] Any person who is found innocent after having been criminally prosecuted shall be entitled to compensation for all of the damages incurred as a result of such prosecution.

Compensation shall be paid by the accuser or the complainant, or the judge if he or she contributed to the injustice of the prosecution intentionally or out of ignorance or negligence.

If the case was prosecuted *sua sponte* or based on a prosecutor's indictment or through the intervention of any other public servant, the compensation shall be paid by the judge, prosecutor, or public servants who brought about or cooperated with the prosecution intentionally or negligently.

² IACHR, Report No. 43/13, Petition 171-06, Admissibility, YGSA, Ecuador, July 11, 2013, para. 30. IACHR, Report No. 1/11, Petition 295-03, Admissibility, Saúl Filormo Cañar Pauta, Ecuador, January 4, 2011, para. 30. IACHR, Report No. 22/09, Petition 908-04, Admissibility, Igmar Alexander Landaeta Mejías, Venezuela, March 20, 2009, para. 52.

is not a sufficient forum for the prosecution, punishment, and reparation of the consequences of human rights violations. According to the information available, the Commission notes that the criminal proceedings against the petitioner concluded with his acquittal by the Fourth Criminal Judgment Court in Santa Cruz, Bolivia, which became final on December 13, 2007, when the Second Criminal Chamber of the Supreme Court of Justice dismissed the review remedies filed by both the prosecution service and the civil complainant in the criminal trial. On that basis, the Commission finds that the domestic remedies were exhausted as regards all claims related to or arising from the criminal proceedings brought against the petitioner.

C. Timeliness of the petition

27. Article 46.1.b of the Convention states that for a petition to be admissible, it must be lodged within a period of six months following the date on which the complainant was notified of the final judgment at the national level.

28. The State maintains that the petition was not filed within a reasonable time period in view of the fact that 49 months had elapsed between the alleged acts that took place and the date in which the petition was filed before the IACHR, and that 71 months had passed between the alleged acts and the State's reply in 2010; this cannot be interpreted as a reasonable period of time.

29. In the case at hand, the judgment in the criminal trial against the petitioner became final on December 13, 2007, and the petition was received by the Commission on June 11, 2008: in other words, within six months following notification of the final decision whereby the remedies offered by domestic jurisdiction were exhausted.

30. Regarding the allegations of torture that were reported but not investigated, Article 46.1.b requires that they be lodged "within a reasonable time." Based on the information available, the Commission believes that that requirement has been satisfied.

D. Duplication and international *res judicata*

31. Article 46.1.c of the Convention provides 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 will not admit a petition that is substantially the same as one previously studied by the Commission or by another international organization. In this case, the parties have not cited the existence of either of those two circumstances, nor can they be inferred from the case documents.

E. Colorable claim

32. At the admissibility stage, the Commission must decide whether the facts stated in the petition could tend to establish a violation, as stipulated in Article 47.b of the American Convention, and whether the petition is "manifestly groundless" or is "obviously out of order," as stated in section (c) of that same article. The level of conviction regarding those standards is different from that which applies in deciding on the merits of a complaint. The Commission must conduct a *prima facie* assessment to examine whether the complaint entails an apparent or potential violation of a right protected by the Convention and not to establish the existence of such a violation. That examination is a summary analysis that does not imply prejudging the merits or offering an advance opinion on them.

33. Moreover, neither the American Convention nor the IACHR's Rules of Procedure require the petitioners to identify the specific rights that they claim were violated by the State in a matter placed before the Commission, although the petitioners may do so. Instead, it falls to the Commission, based on the precedents set by the system, to determine in its admissibility reports what provisions of the relevant inter-American instruments are applicable, the violation of which could be established if the alleged facts are proven by means of adequate evidence.

34. Based on the information available, the Commission notes that the record contains two forensic medical examinations carried out after the petitioner's arrest that indicate the existence of bruises, trauma, and other marks on his body, which the petitioner claims were inflicted on him by police officers. In addition, the petitioner claims that he was held for more than 19 months in inhuman detention conditions at the Palmasola and Chonchocrito prisons. The Commission believes that those claims, if proven true, could tend to establish violations of Article 5 of the Convention.

35. Regarding the alleged violations of personal liberty in the circumstances of his arrest and preventive custody and the claims related to the conditions of his house arrest, the Commission believes that those allegations could tend to establish violations of the right to personal liberty as enshrined in Article 7 of the American Convention. Regarding the alleged violation of the right to privacy caused by the conditions of his house arrest, at the merits stage the Commission will analyze whether they could tend to establish an infringement of Article 11 of the Convention.

36. Regarding the alleged imposition of the judicial confinement order, the Commission believes that the imposition of this precautionary measure for a period of one year and nine months following the judgment that acquitted the petitioner on March 13, 2006, and which was allegedly kept in place even after an appeals judge dismissed the appeals brought against that judgment, could also tend to establish a violation of the right to personal liberty and the right to freedom of movement enshrined in Articles 7 and 22 of the Convention.

37. Regarding the alleged violation of the right to a fair trial, the Commission notes from the case file presented by the petitioner that the proceedings brought against the alleged victim could have contained such irregularities as a possible violation of the presumption of innocence, given the duration and severity of the precautionary measures imposed both before his trial and after his acquittal. Similarly, the Commission believes that the questioning of the petitioner in the absence of legal counsel and the failure to notify the Spanish consular authorities, given that the petitioner is a citizen of that country and that he requested that such notice be given, could tend to establish a violation of his right of defense. Consequently, the Commission believes that these facts could tend to establish a violation of the rights enshrined in Article 8 of the Convention. In addition, during the merits stage, the Commission will analyze whether the alleged violations of the right to a fair trial could have constituted obstacles to access to justice, which could tend to establish violations of the right to judicial protection enshrined in Article 25 of the Convention.

38. Regarding the petitioner's claims related to the failure to investigate and punish his reports of torture, the Commission believes that the fact that to date no criminal investigations have purportedly been opened into those facts could tend to establish a violation of Articles 5 and 25 of the American Convention and of Articles 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

39. Regarding the petitioner's alleged inability to pursue action to obtain compensation for the mistreatment that the State reportedly caused him through its agents, the Commission has been unable to identify specific claims that would allow it to determine a deficiency in the Bolivian State's legal framework for ensuring due compensation for victims of torture; it therefore believes that regarding this point there is no evidence that would tend to establish a violation of Article 25 of the American Convention or of Article 9 of the Inter-American Convention to Prevent and Punish Torture.

40. Finally, the Commission believes that purported mistreatment the alleged victim suffered, together with the alleged denial of justice he faced, could have had an impact on the personal integrity of his partner and family, which could in turn tend to establish a violation of Article 5 of the Convention.

V. CONCLUSIONS

41. On the basis of the foregoing findings of fact and of law, and without prejudging the merits of the matter, the Inter-American Commission concludes that this case meets the admissibility requirements set forth in Articles 46 and 47 of the American Convention; therefore:

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this petition admissible as regards Articles 5, 7, 8, 11, 22, and 25 of the American Convention, in connection with the obligations established in Article 1.1 thereof.
2. To declare this petition admissible as regards Articles 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.
3. To notify the State and the petitioners of this decision.
4. To begin its processing of the merits of the case.
5. To publish this decision and to include it in its Annual Report, to be presented to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 6th day of the month of November, 2014.
(Signed): Tracy Robinson, President; Rose-Marie Antoine, First Vice-President; Felipe González, Second Vice-President; José de Jesús Orozco Henríquez, Paulo Vannuchi, and James L. Cavallaro Commissioners.