

OEA/Ser.L/V/II.
Doc. 310
13 October 2020
Original: English

REPORT No. 293/20
PETITION 434-09
REPORT ON ADMISSIBILITY

GABRIEL ULISES VALDEZ LARQUÉ AND FAMILY
MEXICO

Approved electronically by the Commission on October 13, 2020.

Cite as: IACHR, Report No. 293/20, Petition 434-09. Admissibility. Gabriel Ulises Valdez Larqué and family. Mexico. October 13, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Francisca Bertha Larqué Núñez,
Alleged victim:	Gabriel Ulises Valdez Larqué and family ¹
Respondent State:	México ²
Rights invoked:	Articles I (Right to life, liberty and personal security) II (Right to equality before law), III (Right to religious freedom and worship), V (Right to protection of honor, personal reputation, and private and family life), IX (Right to inviolability of the home), XVII (Right to recognition of juridical personality and civil rights), XVIII (Right to a fair trial), 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 ³ .

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	April 6, 2009
Additional information received at the stage of initial review:	July 16, 2010, Oct 15, 2010, August 19, 2011, January 31, 2012, Dec 14, 2012, January 22, 2013, Oct 1 2014, July 21, 2015,
Notification of the petition to the State:	September 9, 2016
State's first response:	January 6, 2018

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes; American Convention on Human Rights ⁵ (deposit of ratification instrument on March 24, 1981) and Inter-American Convention to Prevent and Punish Torture (deposit of ratification instrument on June 22, 1987).

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible	Articles 5 (humane treatment), 7 (personal liberty) 8 (fair trial), 11 (reputation) and 25 (judicial protection) of the American Convention, in relation to its Articles 1.1 and 2; Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, under the terms of Section VI
Timeliness of the petition:	Yes, under the terms of Section VI

¹ The petitioner - Francisca Bertha Larqué Núñez, and her 15-year-old grandson.

² Pursuant to the provision of Article 17.2.a of the IACHR Rules of Procedure, Commissioner Joel Hernández García, a Mexican national, did not participate in the discussion or the voting on this matter.

³ Hereinafter "the American Declaration".

⁴ The observations submitted by each party were duly transmitted to the opposing party.

⁵ Hereinafter "the American Convention".

V. ALLEGED FACTS

1. This petition deals primarily with claims of torture and custodial mistreatment of the alleged victim arising out of criminal proceedings that were initiated against him with respect to two separate matters.

2. According to the petition, on January 29, 2009 Gabriel Ulises, Valdez Larqué (“the alleged victim” or Mr. Valdez), was arrested for the robbery and attempted murder of a French national and scientist called Frances Christopher Augur. According to the record, the alleged victim, a priest, was arrested in Mexico City by police officers, who suspected him of committing these crimes as a member of a criminal gang. The petitioner alleges that upon arrest, the police officers repeatedly gun butted and beat the alleged victim on his back and in the area of his kidneys. According to the petition, the alleged victim was subsequently taken to a police detention facility in Iztacalco, where he was held incommunicado for 48 hours.

3. The petition further alleges that on the second day of his arrest, the alleged victim was taken to a dark room where two police officers handcuffed him and began to beat him on the chest, as well as placed a plastic bag on his head on a number of occasions. This was aimed at eliciting a confession from the alleged victim. Shortly after being placed in custody, the alleged victim was accused by the police of another crime, namely, the robbery of briefcase of belonging to a Mr. Juan Manuel Camarillo Gutiérrez (“Mr. Camarillo”). According to the petitioner, the authorities published a photo of the alleged victim on television, (in relation to the alleged crimes against Frances Christopher Augur). The petitioner asserts that Mr. Camarillo wrongly identified the alleged victim as the perpetrator.

4. According to the petition, on January 31, 2009 the prosecuting authorities procured an order of *arraigo*⁶ (a judicial detention order). The record indicates that on or about March 2, the prosecuting authorities decided that there was insufficient evidence to sustain the charges against the alleged victim, with respect to the alleged crimes against Frances Christopher Augur, but decided to continue with criminal proceedings with respect to the alleged crime of robbery against Mr. Camarillo. In this regard, subsequently on March 9, a formal order of imprisonment against the alleged victim was ordered and the alleged victim was ultimately transferred to the detention facility *el Reclusorio Norte*. The petitioner claims that the alleged victim continued to be subjected to custodial mistreatment, including two death threats.

5. In April 2009, the alleged victim initiated *amparo* proceedings to challenge his detention. After multiple hearings (including appeals), the First Collegiate Court in Criminal Matters of the First Circuit, on September 23, 2010, ultimately decided to overturn the order of imprisonment, holding that there was no juridical or evidential basis to detain the alleged victim. As a consequence, the alleged victim was released after spending a year and eight months in detention.

6. According to the petitioner, in parallel with the judicial proceedings, a complaint about custodial mistreatment and torture was made to the Comisión de Derechos Humanos del Distrito Federal (“Human Rights Commission”) on February 5 2009. The petitioner affirms that the Human Rights Commission, in September 2010, found that there was evidence of abuse of certain rights of the alleged, including torture and custodial mistreatment. According to the petitioner, the Human Rights Commission recommended that the State take steps to investigate these alleged violations against Mr. Valdez. The Human Rights Commission also found that (a) Mr. Valdez’s right to personal liberty appeared to have been violated, given that he had been arrested without a warrant, and that he was not arrested in *flagrante delicto*; (b) there did not appear to be sufficient evidence to substantiate the charges brought against Mr. Valdez (in respect of both sets of crimes), and thus, this could constitute a violation of due process and the presumption of innocence. According to the petitioner, the Human Rights Commission recommended that the State take certain measures including a public apology by the Ministry of Public Security and the Attorney General’s Office, and by fair compensation. The petitioner also submits a psychological evaluation conducted on the alleged victim in or about September 2013

⁶ An *arraigo* (under Mexican law) is an essentially a detention order granted by a judge for a period of 40 days (in the first instance) in the context of a preliminary investigation and is aimed at minimizing the risk of a defendant interfering with an investigation or absconding from the authorities. This period can be extended for a further 40 days by judicial order.

that contained a diagnosis of Post-Traumatic Stress Disorder (PTSD) and other psychiatric conditions like depression, as a result of the alleged torture/mistreatment of the alleged victim while in custody.

7. The petitioner also alleges that she and members of her family were subjected to threats. In this regard, the petitioner states that in December 2011, she and the alleged victim were subjected to threats from an armed individual – dressed in civilian clothing; and (b) on January 15, 2012, the 15-year-old grandson of petitioner had been threatened by an individual with a knife – at the exit of the school that he attends. According to the petitioner, these acts were perpetrated by State agents in reprisal for her original complaint to the Human Rights Commission. The petitioner indicates that she reported these threats to the Human Rights Commission, which in turn requested the State to take precautionary measures to protect the petitioner and her family.

8. The petitioner claims that the State has taken no steps to comply with any of the recommendations or requests of the Human Rights Commission. Ultimately, the petitioner in light of the failure of the State to comply with these recommendations/requests, indicates that there are no further remedies to pursue as they will be futile.

9. The State contends that the petition is inadmissible for (a) failure to exhaust domestic remedies; (b) failure to state any colorable claims; and (c) violation of the fourth instance formula.

10. The State acknowledges that the alleged victim was arrested and detained in January 2009 – initially on suspicion of having committed crimes against Christopher Augur, and subsequently on suspicion of having committed a crime against José Manuel Camarillo Martín. The State further acknowledges that the alleged victim was initially freed of the charges regarding Christopher Augur (in March 2009) and ultimately freed of the charge regarding Mr. Camarillo in September 2010 after a series of court proceedings (*amparo*).

11. The State acknowledges that that complaints of torture and custodial mistreatment were made to both the prosecuting authorities and to the Human Rights Commission. However, the State contends that on February 4, 2015, the prosecuting authorities concluded that there was insufficient evidence to substantiate the claims of the alleged victim, and decided, therefore, to take no further action, including criminal prosecution. This decision was reconfirmed on March 31, 2015. In this regard, the State claims that medical reports of examinations carried out on Mr. Valdez while in custody did not confirm any injuries as a result of torture/mistreatment, except possible injuries to Mr. Valdez as a result of the use of hand restraints/handcuffs).

12. However, the State simultaneously acknowledges that the Human Rights Commission issued recommendations in 2011 based on findings that the alleged victim had been subjected to torture and custodial mistreatment. The State acknowledges that these recommendations included compensation to Mr. Valdez (taking into account) the physical and mental damage, the damages he suffered as a consequence of torture, as well as covering the costs of remedial, medical, psychological and social services. According to the State, the prosecuting authorities, in 2011, provided guidance to Mr. Valdez on the procedures to be carried out to obtain compensation, but that Mr. Valdez failed to submit the requisite documentation. The State also indicates that 2016, Mr. Valdez renewed his interest in obtaining compensation, but subsequently declined to accept the compensation being offered.

13. In relation to the issue of non-exhaustion of domestic remedies, the State submits firstly that regarding the alleged acts of torture, it was open to the alleged victim to judicially challenge the 2015 decision (to take no further action, including criminal proceedings). The State indicates that the alleged victim failed to take this step. Secondly, the State contends that the alleged victim failed to take the requisite (administrative) steps to obtain compensation, and therefore failed to exhaust this remedy as well.

14. The State considers that the petition is manifestly groundless on two principal grounds. Firstly, the State argues that it has essentially offered compensation to the alleged victim (with regard to the alleged torture and custodial mistreatment) but that the alleged victim has failed to avail himself of such

compensation. Secondly, the State contends that the criminal proceedings against Mr. Valdez were ultimately concluded in his favor on September 23, 2010, and thus there is no basis for any colorable claim in this regard.

15. On the matter of fourth instance, the State argues primarily that the criminal proceedings against the alleged victim were conducted in compliance with due process guarantees, and that in any event, these proceedings were concluded in favor of the alleged victim. In the circumstances, the State argues in the absence of any human rights violations, that any adjudication by the IACHR would be a violation of its fourth instance formula.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

16. On the issue of domestic remedies, the petitioner contends that the failure of the State to comply with the recommendations of the Human Rights Commission effectively puts an end to the possibility of any further remedies. On the other hand, the State contends that the petitioner failed to take any judicial action to challenge its decision of 2015 to take no further investigative action or criminal proceedings with respect to the alleged victim's complaints of torture and custodial mistreatment. The State also contends that the petitioner failed to take advantage of mechanism for reparation – having regard for the findings/recommendations from the Human Rights Commission.

17. The Commission has long established that under international standards applicable to cases like this one, where serious human rights violations such as torture are alleged, the appropriate and effective remedy is precisely the undertaking of an effective criminal investigation aimed at clarifying the facts and, if necessary, individualize and prosecute the persons responsible. The Commission notes the State's claim that the medical examinations of the alleged victim did not reveal any evidence of torture (except for possible injuries as a result of the use of hand restraints/handcuffs). However, in the Commission's view, medical examinations alone are not tantamount to a comprehensive and effective criminal investigation into the allegations of torture. Further, as a general rule, the IACHR considers that a criminal investigation must be conducted promptly in order to protect the interests of the victims, preserve the evidence and also safeguard the rights of anyone deemed a suspect in the framework of the investigation. In this regard, the IACHR notes that the State did not issue a report on its own investigation until 2015, almost six years after the initial arrest of the alleged victim. The Commission considers that this doesn't reflect the promptitude required in these type of investigations. Further, it appears that the State's decision not to continue with investigation and/or to initiate criminal proceedings is at variance with the findings of the Human Rights Commission that the alleged victim was subjected to torture and custodial mistreatment.

18. Given the absence of an effective criminal investigation aimed at clarifying the facts and, if necessary, individualize and prosecute the persons responsible for the alleged torture and custodial mistreatment of the alleged victim, the IACHR concludes that the petition meets the exception to the requirement of prior exhaustion of domestic remedies, in accordance with Article 46(2)(b) and (c) of the Convention. With respect to the petitioner's allegations of threats made against her, the alleged victim, and her grandson, the record shows that no investigation was conducted by the State to clarifying the facts and, if necessary, individualize and prosecute the persons responsible. Accordingly, the Commission considers that the petitioner meets the same exception to the requirement of exhaustion of domestic remedies in accordance with Article 46(2)(b) and (c) of the Convention. The petition was filed with the Commission on April 6, 2009, and the facts alleged therein began in January 2009, with their alleged consequences extending up to the present. Therefore, in view of the context and characteristics of the present case, the Commission considers that the petition was filed within a reasonable period of time and that the admissibility requirement regarding the filing period has been satisfied.

VII. ANALYSIS OF COLORABLE CLAIM

19. The Commission notes that the petitioner has cited various provisions of the American Declaration with respect to the complaints contained in the petition. However, the IACHR has previously established that, once the American Convention enters into force with respect to a State, the latter and not the

Declaration becomes the primary source of applicable law for the Commission, as long as the petition refers to the alleged violation of rights that are identical in both instruments and does not deal with a situation of continued violation. In the present case, the Commission considers that the alleged violations of the American Declaration are not outside the reach of the protection provided by the American Convention. Therefore, the Commission shall examine these allegations in light of the American Convention. Additionally, given that the State is also a signatory to the Inter-American Convention to Prevent and Punish Torture, the Commission will also consider these allegations in light of this Convention.

20. The Commission notes that this petition includes allegations regarding torture, custodial treatment of the alleged victim, as well as uninvestigated threats to the petitioner, the alleged victim, and her grandson.

21. In view of the factual and legal elements presented by the parties and the nature of the matter brought to its attention, the Commission believes that the alleged facts presented by the petitioner are not manifestly unfounded; in particular the Commission considers that the claims regarding (a) the alleged torture and custodial mistreatment of the alleged victim; (b) the failure of the State to act with due diligence or within reasonable time to investigate and clarify the facts (of both the alleged torture/mistreatment as well as the subsequent threats to the alleged victim could characterize possible violations of Articles 5 (Humane Treatment), 7 (Right to Personal Liberty/right not be subjected to arbitrary arrest or imprisonment), 8 (Fair Trial), and 25 (Judicial Protection) of the American Convention in relation to Articles 1.1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects) thereof. The Commission also considers that the alleged threats against the family of the alleged victim (the petitioner and her grandson) and the failure to investigate these allegations could also characterize violations of Articles 5 and 25 of the American Convention in relation to Articles 1.1 and 2.. Further, the public characterization of the alleged victim as a criminal in the media could also characterize a violation of Article 11 (right to reputation). Finally, the Commission considers that the alleged torture and custodial mistreatment and the failure of the State to act with due diligence to investigate and clarify the facts of the alleged torture – could possibly establish violations of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of the alleged victim.

22. With respect to the State's allegations regarding the so-called “fourth instance” formula, the Commission reiterates that, for the purposes of admissibility, it must decide whether the alleged facts may characterize a violation of rights, as stipulated in article 47 (b) of the American Convention, or if the petition is “manifestly unfounded” or “its total inadmissibility is evident”, pursuant to subsection (c) of said article. The criteria for evaluating these requirements differs from that used to rule on the merits of a petition. Likewise, within the framework of its mandate, it is competent to declare a petition admissible when it refers to internal processes that could violate rights guaranteed by the American Convention. In other words, in light of the aforementioned conventional standards, in accordance with article 34 of its Rules of Procedure, the admissibility analysis focuses on the verification of such requirements, which refer to the existence of elements that, if true, could constitute prima facie violation of the American Convention.⁷

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 5, 7, 8, 11, and 25, in relation to Articles 1.1 and 2, of the American Convention; and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture; and

2. To notify the parties of this decision; to continue with the analysis on the merits; and 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 13th day of the month of October, 2020. (Signed): Antonia Urrejola, First Vice-President; Flávia Piovesan, Second Vice-President; Esmeralda E. Arosemena Bernal de Troitiño, and Stuardo Ralón Orellana, Commissioners.

⁷ IACHR, Report No. 143/18, Petition 940-08. Admissibility. Luis Américo Ayala Gonzales. Peru. December 4, 2018, para. 12.