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REPORT No. 223/20
PETITION 938-10
REPORT ON ADMISSIBILITY

SERGIO ARTURO ALBA ROJO
MEXICO

Approved electronically by the Commission August 30, 2020.

Cite as: IACHR, Report No. 223/20, Petition 938-10. Admissibility. Sergio Arturo Alba Rojo. Mexico. August 30, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Sergio Arturo Alba Rojo and Ruben Israel Torres Reza
Alleged victim:	Sergio Arturo Alba Rojo
Respondent State:	Mexico ¹
Rights invoked:	Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial) and 10 (compensation) of the American Convention on Human Rights ² in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects); and Articles 2, 3 and all other pertinent Articles of the Inter-American Convention to Prevent and Punish Torture

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	June 22, 2010
Notification of the petition to the State:	March 22, 2017
State's first response:	April 25, 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 (instrument of ratification deposited on March 24, 1981) and Inter-American Convention to Prevent and Punish Torture (instrument of ratification deposited 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), 8 (fair trial) and 25 (judicial protection) of the American Convention, in relation to article 1.1 (obligation to respect rights) thereof; and 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, the exception of Article 46.2.c) of the American Convention is applicable
Timeliness of the petition:	Yes, in the terms of Section VI

V. ALLEGED FACTS

1. The petitioner requests that the State of Mexico be declared internationally responsible for the commission of acts of torture against him; for having criminally prosecuted him without the assistance of a

¹ Pursuant to article 17.2.a of the Commission's Rules of Procedure, Commissioner Joel Hernández García, a Mexican national, did not participate in the debates nor in the decision of the present matter.

² Hereinafter "the American Convention".

³ The observations submitted by each party were duly transmitted to the opposing party.

defense attorney during the first stage of the proceedings; and because his criminal conviction was based on a confession extracted by means of torture.

2. Mr. Alba Rojo informs that he is deprived of liberty at the Aquiles Cerdan Social Rehabilitation Center in the city of Chihuahua, having been convicted in 1991 to 40 years in prison for a multiple homicide that took place in June 1988. Mr. Alba informs he was arrested on June 3, 1988 by the Judicial Police of the State of Chihuahua, which proceeded to torture him –with different methods described by him– and to extract from him, through that torture, a confession of his responsibility for the crime. This confession, which was already written along with its ministerial ratification when it was handed to Mr. Alba for him to sign, was allegedly the central definitive evidence upon which his criminal convictions at the trial and appellate levels were based. The petitioner holds that the statement and its ministerial ratification “*contain facts that were not declared by me, since when I signed them they had already been drafted, likewise the facts contained therein are false*”, apart from having been signed after the application of tortures and without assistance from a defense counsel. Mr. Alba also claims that at the time of his detention he was not informed of the crimes of which he was being charged, of the name of his accuser, nor of his right to designate a defense counsel or to have a public defender be present during all procedural actions. In spite of this, he was convicted in first instance by the Second Criminal Judge of the Judicial District of Morelos on August 21, 1990, to 40 years in prison. This judgment was appealed and confirmed by the First Criminal Chamber of the Supreme Court of Justice of the State of Chihuahua, on February 8, 1991.

3. The petitioner claims that at the time of the multiple homicide of which he was accused, and at the date in which he was prosecuted and convicted, Mexico was already a party to the American Convention, which enshrines both the prohibition of torture and the right of criminal defendants to a defense counsel from the moment of their detention; and that at that time, the international treaties ratified by Mexico held the same hierarchy as federal legislation, for which reason said guarantees were mandatory even if they were not expressly incorporated into the national legislation. For this reason he considers that the procedural actions conducted against him were invalid.

4. It is proven in the casefile that Mr. Alba informed the judges who were hearing his case about the torture of which he claimed to have been the victim during his extended declaration of June 22, 1988, as well as in the appeal he filed against the first instance conviction before the First Criminal Chamber of the Supreme Court of Justice of the State of Chihuahua on October 26, 1990. In the appeal Mr. Alba also informed that he had not been assisted by a lawyer at the time of signing the allegedly prefabricated confession. His claim of torture was allegedly not investigated, but rather rebated and dismissed with logic-based arguments by the appellate judge in his decision⁴.

5. After his conviction, on September 10, 2007, Mr. Alba filed a direct amparo petition against the trial court judgment, arguing that the confession had been forced by means of violence, and that he had lacked a defense counsel at the time of signing it. He also presented the judge with an exculpatory statement given by one of the children of the victims of the multiple homicide, who held that the murderers had been different persons. The amparo was denied in first instance on May 19, 2008 by the First Collegiate Tribunal on Criminal and Administrative Matters of the Seventeenth Circuit in Chihuahua, which considered that at the time of the facts, in 1988, the Mexican Constitution and the Criminal Code of Chihuahua did not enshrine the right of the accused to have a lawyer from the beginning of the preliminary inquiry, but that it was enough to inform him he had the right to appoint a lawyer. It is proven in the casefile that this judgment denying the amparo was notified via court notice board posting on May 27, 2008.

⁴ The Supreme Court of Justice of Chihuahua reasoned as follows: “[...] The referred confession does have evidentiary value because it is considered plausible, adjusted to the reality of the events, which is not obstructed by the fact that the defendant was not assisted by an attorney at the time of his declaring it, because he was informed of his right to designate one and he reserved that right for later exercise. On the other hand, even though the defendant presented some injuries, according to the medical certificate at pp. 12, there is no proof that they were caused by members of the Judicial Police in order for him to confess the facts, it being necessary to underline that neither before the Public Ministry nor before the Judge during the preparatory declaration, did he argue that he had been thus violated, but he only mentioned it when expanding his declaration, on June twenty-second, and the Court presumes on the grounds of the time that elapsed that he was advised to declare that he had been coerced to confess, or that he reflected upon the convenience of brandishing that argument.”

6. On June 12, 2009 Mr. Alba filed a motion to review the direct amparo judgment of May 19, 2008 before the Supreme Court of Justice of the Nation, whose First Chamber, on August 13, 2008, denied the review for reasons identical to those set forth in the challenged judgment. The petitioner claims that this decision by the Supreme Court of Justice was not notified to him until February 19, 2010. Nevertheless, there is record in the casefile that the decision of the First Collegiate Tribunal on Criminal and Administrative Matters of the Seventeenth Circuit, which formally received the judgment of the First Chamber of the Supreme Court of Justice and ordered the archive of the amparo proceedings, was notified via court notice board posting on September 8, 2008.

7. The State, in its response, informs that Mr. Alba was granted a partial reduction of his sentence by a decision of July 10, 2013, thereby anticipating the date of finalization of his prison term to May 20, 2020, which relieved him of purging 8 years and 16 days of the original sentence.

8. Likewise, the State requests that the petition be declared inadmissible. Firstly, it argues the petition was presented after 6 months had elapsed since the notification of the judgment which put an end to the amparo proceedings initiated by the petitioner, considering that this judgment was adopted on May 19, 2008. The State specifies that the motion for review filed against this amparo judgment was not a suitable remedy to resolve Mr. Alba's claims; however, this remedy was decided on August 13, 2008, and even if this second date were to be taken to calculate the 6 months to file the petition before the IACHR, the petition would still be untimely.

9. Second, the State argues that from the petition it is not possible to identify human rights violations in the sense of Article 47 of the American Convention, since the criminal proceedings against Mr. Alba were conducted with full respect for the fair trial guarantees, as were the amparo proceedings he brought forth. The State also holds that at the time of Mr. Alba's detention he was informed of his right to appoint a defense counsel, and that Mr. Alba himself refused to make such appointment, for which reason he lacked a lawyer only during the procedural stage of reception of his initial declaration, given that during the following stages he was indeed assisted by a defense counsel appointed by him. Lastly, the State affirms that the alleged acts of torture "*were analyzed during the criminal proceeding: 1) at the time of performing the corresponding medical examinations; and 2) at the time when the judge ruled the detention as legal*". Given that no human rights violations took place, but rather that merely unfavorable decisions for Mr. Alba were adopted, the State requests the dismissal of the petition.

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

10. In the present case the Commission notes that the petitioner's main claim is twofold: on the one hand, he claims he was tortured in order to extract a confession from him, and that such torture was not investigated, rather granting a decisive evidentiary value to the confession obtained by such means; on the other hand, he claims he was not assisted by a defense attorney during the preliminary stage of his criminal prosecution.

11. The IACHR has established in reiterated decisions that in cases where violations of the fair trial guarantees, personal liberty and other human rights are denounced to have occurred in the course of criminal proceedings, the suitable remedies to exhaust are as a general rule those means provided by the national procedural legislation which allow for attacking, in the course of the very same contested proceedings, the acts and decisions adopted during their development, particularly the ordinary judicial remedies available, or the extraordinary ones if they were filed by the alleged victims of violations of personal liberty and procedural safeguards in order to uphold their rights, which once exhausted, comply with the requirement of article 46.1.(a) of the American Convention⁵. Specifically in relation to Mexico, the IACHR has also accepted as

⁵ IACHR, Report No. 168/17. Admissibility. Miguel Ángel Morales Morales. Peru. December 1, 2017, par. 15; Report No. 108/19. Petition 81-09. Admissibility. Anael Fidel Sanjuanelo Polo and family. Colombia. July 28, 2019, par. 6, 15; Report No. 92/14, Petition P-1196-03. Admissibility. Daniel Omar Camusso and son. Argentina. November 4, 2014, pars. 68 and following; IACHR, Report on Admissibility No. 104/13, Petition 643-00. Admissibility. Hebe Sánchez de Améndola and daughters. Argentina. November 5, 2013, par. 24

suitable domestic remedies to be exhausted in these cases, any amparo petitions which have actually been presented by the affected persons against the judicial proceedings and actions that they consider detrimental to their fair trial safeguards⁶. Regarding Mr. Alba's claim of lack of assistance by a defense counsel, the IACHR notes that this is a claim that the petitioner brought forth both in the course of the original criminal proceedings, and also through the amparo petition he presented in the year 2007. The petitioner declares he only learned about the final decision adopted by the First Chamber of the Supreme Court of Justice on February 19, 2010, when he was given certified copies of all the records of the First Collegiate Tribunal on Criminal and Administrative Matters' activities during the proceedings, since before this date, he claims, he did not receive any notification. However, the casefile holds reliable evidence that Mr. Alba did indeed have access to the judicial decisions adopted in the course of said amparo judicial proceedings, from the moment of their adoption in the year 2008: on the one hand, the decision by the First Collegiate Tribunal was notified by means of court notice board posting, and likewise, Mr. Alba's attorney requested and received a certified copy of that judgment on May 29, 2008, thereafter filing against it a motion for review before the Supreme Court of Justice. On the other hand, the decision of the Supreme Court on such request for review was adopted on August 13, 2008 and notified by court notice board posting on September 8, 2008; and it is recorded in the casefile that on September 11, 2008, the same attorney for Mr. Alba requested the First Collegiate Tribunal on Criminal and Administrative Matters of the Seventeenth Circuit to issue a copy of that decision by the Supreme Court of Justice, issuance which was authorized on that same day, and a certified copy was issued and handed on October 8, 2008 to the person authorized by Mr. Alba's attorney. Therefore it cannot be accepted as true that Mr. Alba, as he states in his petition, only learned about the content of such judgments in February, 2010. In light of the above, it is clear that between the judgment of the Supreme Court of Justice of September 8, 2008 and the filing of the petition before the Inter-American Commission on June 22, 2010 more than six months elapsed, for which reason, in relation to the claim of lack of assistance by a defense counsel, the petition is untimely under article 46.1.b) of the American Convention.

12. A different matter is the petitioner's claim in the sense of having been the victim of torture in order to extract a prefabricated confession from him, at the beginning of the criminal proceedings. It is the IACHR's uniform jurisprudence that in cases of torture, the State has the *ex officio* duty to initiate, conduct and bring to a close a criminal investigation which can allow for the prosecution and punishment of the perpetrators of such crimes⁷. The inter-American Commission has long considered this *ex-officio* duty of the State to be immediately activated when the victim, or whomever acts on his or her behalf, brings the alleged torture or mistreatment to the attention of the authorities, by any suitable means⁸. These suitable means may include a criminal complaint, a communication to the prison or administrative authorities⁹, a report before a judicial authority¹⁰, or even the conclusions of national human rights bodies¹¹. Once the authorities have been made aware of a report of torture through any one or several of these suitable channels, if the criminal justice authorities have refrained from initiating the corresponding investigation, the IACHR has declared the exception of unjustified delay to the duty of exhausting domestic remedies applicable¹².

13. In the instant case, the petition casefile shows that Mr. Alba informed the judges who were hearing his case about the torture of which he had been a victim on at least three occasions: first, during his extended declaration on June 22, 1988; second, in the appeal filed against the trial court conviction before the

and following; and IACHR, Report No. 85/12, Petition 381-03. Admissibility. S. and others, Ecuador. November 8, 2012, par. 23 and following.

⁶ IACHR, Report No. 166/17. Admissibility. Fausto Soto Miller. Mexico. December 1, 2017, par. 10; Report No. 165/17. Petition 86-08. Admissibility. Dionicio Cervantes Nolasco and Armando Aguilar Reyes. Mexico. December 1, 2017, par. 5.

⁷ IACHR, Report No.37/18. Admissibility. Patricio Germán García Bartholin. Chile. May 4, 2018, par. 19; Report No. 156/17. Admissibility. Carlos Alfonso Fonseca Murillo. Ecuador. November 30, 2017, par. 13.

⁸ IACHR, Report No. 20/17. Admissibility. Rodolfo David Piñeyro Ríos. Argentina. March 12, 2017, par. 5.

⁹ IACHR, Report No. 128/18. Petition 435-07. Admissibility. Antonio Lucio Lozano Moreno. Peru. November 19, 2018, par. 10; Report No. 166/17. Admissibility. Fausto Soto Miller. México. December 1, 2017, par. 11

¹⁰ IACHR, Report No. 14/08, Petition 652-04. Admissibility. Hugo Humberto Ruiz Fuentes. Guatemala. March 5, 2008, par. 64; Report No. 11/18. Admissibility. Nicolás Tamez Ramírez. Mexico February 24, 2018, par. 6.

¹¹ IACHR, Report No. 15/18. Petition 1083-07. Héctor Galindo Gochicoa and family. México. February 24, 2018, par. 8.

¹² IACHR, Report No. 166/17. Admissibility. Fausto Soto Miller. Mexico. December 1, 2017, par. 5, 11; Report No. 4/19. Petition 673-11. Admissibility. Fernando Alcântara de Figueiredo and Laci Marinho de Araújo. Brazil. January 3, 2019, par. 22; Report No. 122/17. Petition 156-08. Admissibility. Williams Mariano Paría Tapia. Peru. September 7, 2017, par. 16; Report No. 20/17. Admissibility. Rodolfo David Piñeyro Ríos. Argentina. March 12, 2017, par. 5.

First Criminal Chamber of the Supreme Court of Justice of the State of Chihuahua on October 26, 1990. However, his claim of torture was not investigated, but dismissed by the appellate court in its judgment for reasons that were not based on an independent investigation of the reported facts. Third, during the amparo proceedings in 2007-2008 the Collegiate Tribunal on Criminal and Administrative Matters of the Seventeenth Circuit took note of the fact that the confession signed by Mr. Alba had been extracted by means of violence, but no investigative or legal measure was adopted in that regard. Therefore, the Commission notes that since June 1988 the claim of torture brought forth by Mr. Alba was ignored on at least three occasions by the judicial authorities, which configures, in regard to this aspect of the petition, the exception of unjustified delay established in article 46.2.c) of the Convention.

14. In this regard, considering that Mr. Alba began to claim he had been the victim of torture from the start of his criminal prosecution, and that he raised the matter before the criminal judges, as well as before the judges who heard the amparo petition he filed in September 2007; that his claims were dismissed with no investigation, most recently in the trial court judgment that rejected the amparo in May 2008; that the petition was received at the IACHR in June, 2010; and that the effects of the alleged impunity concerning these violations allegedly persist to this date, the IACHR concludes that the petition was filed within a reasonable period of time, in the terms of article 32.2 of its Rules for Procedure, in connection to this point.

VII. ANALYSIS OF COLORABLE CLAIM

15. As it has been pointed out in the present report, Mr. Alba has resorted to the IACHR claiming to have been a victim of torture during the initial stage of his detention by the Judicial Police of the State of Chihuahua in June, 1988, a claim that he later raised before the Mexican judges on at least three opportunities, without such acts being investigated or the criminal responsibility of the perpetrators being established. In view of these considerations, and after examining the factual and legal elements set forth by the parties, the IACHR considers that the petitioner's claims denouncing acts of torture are not manifestly unfounded and require a study on the merits, since the alleged facts, if corroborated, may characterize violations of Articles 5 (humane treatment), 8 (fair trial) and 25 (judicial protection) of the American Convention, in connection with article 1.1 thereof (obligation to respect rights), as well as of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Mr. Sergio Arturo Alba Rojo.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 5, 8 and 25 of the American Convention, in connection with Article 1.1 thereof, and in relation to 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 30th day of the month of August, 2020. (Signed): Antonia Urrejola, First Vice-President; Flávia Piovesan, Second Vice-President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Julissa Mantilla Falcón, and Stuardo Ralón Orellana, Commissioners.