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REPORT No. 43/18
PETITION 705-07
REPORT ON ADMISSIBILITY

NERIS LUZ MARTÍNEZ PADILLA AND DAUGHTERS
COLOMBIA

Approved by the Commission at its session No. 2126 held on May 4, 2018.
168th Special Period of Sessions.

Cite as: IACHR, Report No. 43/18, Petition 705-07. Admissibility. Neris Luz Martínez Padilla and daughters. Colombia. May 4, 2018.

I. INFORMATION ABOUT THE PETITION

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| Petitioner: | Santiago Gamba Rondón |
| Alleged victims: | Neris Luz Martínez Padilla and daughters ¹ |
| Respondent State: | Colombia ² |
| Rights invoked: | Articles 7 (personal liberty), 10 (compensation), 17 (family) and 19 (child), in relation to article 1.1 (obligation to respect rights), of the American Convention on Human Rights ³ |

II. PROCEDURE BEFORE THE IACHR⁴

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| Filing of the petition: | June 4, 2007 |
| Additional information received at the stage of initial review: | May 23, 2011 |
| Notification of the petition to the State: | October 13, 2011 |
| State's first response: | March 2, 2012 |
| Additional observations from the petitioner: | September 27 and December 12, 2013 |
| Additional observations from the State: | November 15, 2013 |

III. COMPETENCE

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| 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 (deposit of ratification instrument on July 31, 1973) |

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

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| Duplication of procedures and International <i>res judicata</i>: | No |
| Rights declared admissible | Articles 8 (fair trial), 17 (family), 19 (child) and 25 (judicial protection), in the light of article 7 (personal liberty) and in relation to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) of the American Convention |
| Exhaustion of domestic remedies or applicability of an exception to the rule: | Yes; December 13, 2006 |
| Timeliness of the petition: | Yes; June 4, 2007 |

¹ Gina Marcela, Jessica Paola and Karen Andrea.

² Pursuant to Article 17.2.a of the IACHR Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, a Colombian national, did not participate in the discussion or the decision on this matter.

³ Hereinafter "the Convention" or "the American Convention."

⁴ The observations submitted by each party were duly transmitted to the opposing party. On December 15, 2014, the petitioner sent a communication to the Executive Secretariat requesting information on the processing of the petition.

V. ALLEGED FACTS

1. The petitioner alleges that the State violated the rights of Neris Luz Martínez Padilla in having unfairly subjected her to pre-trial detention, depriving her of liberty for three years, six months and five days. He claims that this measure also infringed the rights of her daughters, Gina Marcela, Jessica Paola and Karen Andrea, aged two, four and five respectively, at the time their parents were detained; and that the State did not protect the daughters while their mother was in prison.

2. He indicates that on June 16, 1997, in the framework of a search into the family house, in the San Bernardo neighborhood in Bogotá, gear for the exclusive use by the National Police was found, thus Mrs. Martínez and her husband were arrested on the charge of illegal possession of uniforms and badges of the security forces. The petitioner claims that since the alleged victim was unable to prevent the criminal proceedings or avoid the judicial procedures, the authorities held her in pre-trial detention for over three years and a half on the grounds that there was no proof of why she had such gear at her house. He claims that the several legal remedies filed to obtain a review, the annulment or a modification of the precautionary measure were rejected, and that the alleged victim was released from prison only after the Fourth Criminal Court of Bogota acquitted her, on December 21, 2000.

3. The petitioner complains that, in drafting the warrant for the search of the family house, the Prosecutor should have included a series of measures for the protection of the three girls living there. He alleges that precisely on June 16, 1997 the police officers, after arresting the parents and verifying that the girls were left alone, should have reported this situation to the Family Welfare Institute of Bogotá and to the Colombian Welfare Institute; but that they did not. He also affirms that the judicial authorities overturned the several remedies that Mrs. Martínez and her husband lodged to obtain their liberty, and that these remedies were particularly based on the fact that their daughters were in a situation of orphanhood. He alleges that despite knowing about the girls' living conditions, the authorities failed to adopt measures to protect them. Thus, he claims that the authorities of the prosecution, the police and the courts all violated its obligation to protect the girls, who were deprived of housing, food, education, health services and a family. He indicates that the girls were barely aided by two female friends of the parents and survived thanks to charity and to the money that their mother earned by working in prison.

4. The petitioner submits that on February 9, 2004 Mrs. Martínez presented, on behalf of her daughters and her own, a claim for damages before the Third Chamber of the Administrative Law Court of Cundinamarca to request that the Attorney General and the Judiciary be punished to pay compensation for the moral and material damages caused by their failure in the performance of duty which led to her unfair deprivation of liberty, her separation from her daughters and moral damage to her daughters. The court dismissed her claims on the basis that the rule of "the victim's own guilt" was applicable in her case—exempting the administration officers from responsibility— because she was unwise and careless in ignoring the objects "stored in her house, especially in the bedroom where she and her husband sleep."

5. The petitioner alleges that the court did not consider responsibility on the part of the authorities for depriving an innocent person of liberty, or analyze the State's breach of its obligation to protect the girls. It asserts that the alleged victim challenged the decision and that, on December 13, 2006, the same administrative court ruled it out of order because it considered that the bill of damages filed was below the minimum required by the law to undertake a review, under Law 957 of April 27, 2005.

6. For its part, the State claims that the acts originating the instant petition do not establish violations of the rights protected by the Convention and maintains that the petitioner does not submit enough evidence to disprove what was found in the domestic proceedings. It affirms that the alleged victim's deprivation of liberty was fair and based on the evidence derived from the seizure of gear in her domicile. It indicates that in this case the factual circumstances that Article 10 of the Convention require for compensation are not met as there was no final judgment or miscarriage of justice. In regard to the situation faced by the girls, the State asserts there are no specific obligations that were unfulfilled by the State; that it was not notified of the situation of the girls' lack of protection; that Mrs. Martínez did not make use of the

kindergarten of the prison to preserve the family bonds, and that if the girls' needs were met by her friends, there was no such situation of lack of protection.

7. It claims that the petitioner intends to have the IACHR rule on acts that were already and duly heard by the domestic courts through processings where the alleged victim's fundamental right to a fair trial was ensured. It alleges lack of exhaustion of the constitutional venue because no appeal for legal protection was filed to challenge the administrative court's judgment. In this regard, the State requests the Commission to declare this petition inadmissible given the lack of acts that may establish a violation of rights, and the lack of exhaustion of domestic remedies. It also claims that if the petition is admitted, the Commission would work as a court of fourth instance.

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

8. The petitioner claims that the alleged victim was released from prison after the trial court's judgment of acquittal of December 21, 2000, confirmed by the Criminal Chamber of the District Superior Court of Bogotá on October 23, 2002. He also indicates that a claim for damages was lodged against the Attorney General and the Office of Court Administration for the damages caused by the unfair application of pre-trial detention, a remedy dismissed on November 1, 2006 by the Administrative Court of Cundinamarca. On December 13, 2006, the same court did not admit the appeal because of the bill of damages, thus domestic remedies were exhausted on that date. For its part, the State asserts that the alleged victim should have lodged an appeal for legal protection before the constitutional jurisdiction.

9. In regard to the exhaustion of domestic remedies in relation to the criminal proceedings, the IACHR believes that the domestic remedies were exhausted through the court of appeal's decision that confirmed the alleged victim's acquittal. With respect to the administrative proceedings, the Commission observes that the alleged victim exhausted the ordinary remedies through the appeal, and that, as a result, the instant petition meets the requirement established in Article 46.1.a of the Convention.

10. Concerning the alleged lack of measures of protection for the girls on the part of the State authorities, the Commission notes that, based on the information submitted, during the pre-trial detention of the mother and the father of the girls, there were at least three applications for bail in which the defense counsels informed the judicial authorities about the three girls' situation. The State, for its part, indicates that it never received specific information about them. Based on the available information, the Commission concludes that the authorities who heard the applications for bail knew of the situation reported in the petition but apparently failed to adopt measures on that. Additionally, the Commission observes that after her release from prison, Mrs. Martínez filed a claim for damages for the consequences of her deprivation of liberty in regard to herself and her family, such as the alleged lack of protection of the girls. In view of this, for the purpose of admissibility, the IACHR believes that the instant petition meets the requirement established in Article 46.1.a of the Convention.

11. In regard to the requirement of timeliness, the Commission reiterates that the rule of the six-month period rests on the principle of legal certainty.⁵ On the basis of this principle, the IACHR believes that the petitioner's allegations in relation to the criminal proceedings against Mrs. Martínez and her deprivation of liberty are untimely under Article 46.1.b of the American Convention because said proceedings finished almost five years before the petition was filed before the Commission on June 4, 2007.

12. In regard to the claims concerning the purported lack of compensation to the alleged victims for the damage caused by Mrs. Martínez's pre-trial detention and the lack of protection for the girls on the part of the State, these are inadmissible in the light of Article 46.1.b of the Convention. This decision is based

⁵ IACHR, Report No. 100/06. Petition 943-04, Inadmissibility. Gaybor Tapia and Colón Eloy Muñoz, Ecuador, October 21, 2006, par. 20.

on the fact that the final resolution in the proceedings on compensation was issued on December 13, 2006 and the petition to the IACHR was filed on June 4, 2007.

VII. ANALYSIS OF COLORABLE CLAIM

13. In view of the elements of fact and law presented by the parties and the nature of the matter brought to its attention, the Commission believes that, if proved, the purported failure to grant reparation to the alleged victims for the unfair application of pre-trial detention in single instance of jurisdiction to the detriment of Mrs. Martínez, as well as the lack of State protection for her daughters may establish possible violations of Articles 8 (fair trial), 17 (family), 19 (child) and 25 (judicial protection) of the American Convention, in connection with its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects), to the detriment of the alleged victims.⁶ The IACHR will analyze the standards applied in the civil proceedings in the light of Article 7 (personal liberty) of the Convention and, based on its conclusions in regard to the timeliness of the petition, the IACHR will analyze the facts concerning the criminal proceedings in order to understand the interests at stake, as well as the matter brought to the attention of the courts in the civil proceedings.⁷

14. As to the petitioner's claim about the alleged violation of Article 10 (compensation) of the American Convention, it is worth noting that this provision refers to compensation in the event of a sentence through a miscarriage of justice; therefore, the Commission declares the claim inadmissible.

15. Finally, regarding the State's observation about a court of fourth instance, the Commission notes that in declaring this petition admissible, it does not seek to replace the domestic authorities' competence. Instead, the Commission will analyze in the merits stage whether the domestic judicial proceedings conformed to the rights of due process and judicial protection, in accordance with the rights enshrined in the American Convention.

VIII. DECISION

1. To declare the instant petition admissible in relation to Articles 8, 17, 19 and 25 of the American Convention, in the light of its Article 7 and in connection with its Articles 1.1 and 2;

2. To find the instant petition inadmissible in relation to Article 10 of the American Convention; and

3. 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 in the city of Santo Domingo, Dominican Republic, on the 4th day of the month of May, 2018. (Signed): Margarette May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Francisco José Eguiguren Praeli, Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.

⁶ IACHR, Report on the Use of Pretrial Detention in the Americas, December 30, 2013; paras. 143 and 217; IACHR, Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas, July 3, 2017, paras. 201 and 203.

⁷ IACHR, Report No. 2/18. Admissibility. Emilio Peón and family. Argentina, March 24, 2018, par. 14.