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REPORT No. 158/17
PETITION 404-08
REPORT ON ADMISSIBILITY

JOSÉ LUIS VILLEDA RECINOS
GUATEMALA

Approved by the Commission at its session No. 2110 held on November 30, 2017.
166th Special Period of Sessions.

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Guatemala. November 30, 2017.

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 NOVEMBER 30, 2017

I. INFORMATION ABOUT THE PETITION

Petitioner:	José Luis Villeda Recinos
Alleged victim:	José Luis Villeda Recinos
State denounced:	Guatemala
Rights invoked:	Articles 5 (Humane Treatment), 7 (Personal Liberty), 8 (Fair Trial), 9 (Freedom from Ex Post Facto Laws) and 25 (Judicial Protection), in connection with Articles 1.1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects) of the American Convention on Human Rights ¹

II. PROCEDURE BEFORE THE IACHR²

Date on which the petition was received:	April 8, 2008
Additional information received at the initial study stage:	September 28, 2012
Date on which the petition was transmitted to the State:	January 9, 2013
Date of the State's first response:	February 20, 2013
Additional observations from the petitioner:	July 25, 2013 and May 12, 2015
Additional observations from the State:	December 20, 2013

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 (ratification instrument deposited on May 25, 1978)

IV. ANALYSIS OF 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 7 (Personal Liberty), 8 (Fair Trial) and 25 (Judicial Protection) of the American Convention, in relation to its Articles 1.1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, October 4, 2007
Timeliness of the petition:	Yes, April 8, 2008

¹ Hereinafter "the Convention" or "the American Convention."

² The observations presented by each party were duly transmitted to the opposing party.

V. ALLEGED FACTS

1. Mr. José Luis Villeda Recinos (“the petitioner” or “Mr. Villeda”) claims that on October 24, 2003 he was detained for the alleged commission of aggravated rape and continuous acts of violent indecent assault to the detriment of his under aged daughter. He indicates that several times he requested the Second Trial Judge for Environmental, Drug-trafficking and Criminal Offenses of Mixco to grant him permission to have, in the preparatory stage of the procedure, a private company undertake an early polygraph test on his daughter, on the belief that this was the appropriate time in the process to submit such evidence. However, on January 19, 2004, the Judge denied his request as he considered that in light of the nature and the characteristics of this test it could be undertaken during the oral proceedings.

2. The petitioner asserts that on February 10, 2004, the Public Prosecutor’s Office filed an accusation without granting him access to the interviews and examinations that the Prosecutor’s Office psychologist conducted to found their expert’s opinion. On February 20, the petitioner requested the Judge the undertaking of a comprehensive psychological examination on his daughter, and that the tests and interviews used by the Prosecutor’s Office to found its expert opinion be shown to him. Therefore, on February 24, the Judge ordered the Public Prosecutor’s Office to reveal said documents, but said body refused and filed an appeal for review claiming that showing the documents would be anti-ethical and infringe the psychologist’s confidentiality and discretion. On March 5, the Judge declared this remedy out of order, allowing the petitioner to access the documents. Still, the petitioner appears to have accessed the information only 10 days before the trial’s opening hearing took place.

3. This hearing was conducted on March 15, 2004 and the petitioner claimed there that he was precluded from accessing the information leading to the undertaking of the psychological test on the victim, with enough time to analyze it; that the accusation did not show the precise dates, place and manner of the events at issue; and that the only scientific test conducted (the chemical-biological test) proved that no traces of semen or spermatozoids were found in the victim’s body. The petitioner indicates that on March 16, the trial judge issued an order to commence proceedings, declaring that since there were no signs of violence and witness statements indicated that the girl did not scream or ask for help, proceedings would be conducted for purported continuous acts of violent indecent assault and aggravated statutory rape.

4. After the order to commence proceedings was issued, the case file was sent to the Second Trial Court for Environmental, Drug-trafficking and Criminal Offenses of Mixco for the oral proceedings. During this stage, the petitioner asserts, he requested again the undertaking of a comprehensive psychological examination and a polygraph test. But the undertaking of these procedures was denied again because the court considered them out of order on the grounds that “... *the defendant and his counsel could have proposed them as investigation means at any time during the preparatory procedure, now finished, or requested their early undertaking by way of a supplementary investigation.*” At such denial, the petitioner lodged an appeal for review before the same court, alleging the violation of his right of defense and the adversarial principle. He also submitted that on January 19, 2004 the Second Criminal Trial Judge dismissed those early evidentiary procedures on the basis that these could be submitted in the subsequent stage of trial. However, on July 27 the Court declared the remedy out of order on the grounds that the defense could have requested said investigation procedures at any time during the previous procedural stage. The petitioner asserts that such repeated denials have violated his right to submit evidence in his defense and to contest inculpatory evidence.

5. On September 27, 2004, the Second Trial Court for Environmental, Drug-trafficking and Criminal Offenses of Mixco declared Mr. Villeda guilty of aggravated rape and continuous acts of violent indecent assault, convicting him to a 36-year term in prison, at 18 years each offense. Mr. Villeda argues that this deprivation of liberty is arbitrary, as it was imposed in proceedings in which his basic judicial rights and the presumption of innocence were violated because he was convicted of acts that were not duly proved. The petitioner also contends that he was attributed the charges of aggravated statutory rape and continuous acts of violent indecent assault, and that the maximum sentence for the charges initially filed in the trial’s opening hearing was of two and a half years’ confinement. Likewise, he believes that his right to contest inculpatory

evidence was violated, as he was never allowed to submit an independent psychologist's expert opinion and a polygraph test to provide information different than the one submitted by the Public Prosecutor's Office.

6. In addition, the petitioner indicates that the procedural law precluded him from filing a comprehensive appeal against the guilty verdict because the available remedies (special appeal and appeal for review) are of a special nature. However, Mr. Villeda lodged a special appeal with the First Chamber of the Court of Appeals for Environmental, Drug-trafficking and Criminal Offenses, alleging procedural and substantive errors in the judgment. On February 9, 2005, said Court declared the special appeal out of order, confirming thus the lower-court judgment on the grounds that *"it is impossible to make a critical assessment of the evidentiary means on which the sentence is based; supporting evidence cannot be challenged; and the court of appeals is not entitled to examine the motives leading to the trial court's decision."*

7. After this decision, the petitioner lodged an appeal for review before the Supreme Court of Justice for the court of appeals' purported failure to rule on the claim of alleged non-observance of the law by the trial court's issuance of the guilty verdict. On November 17, 2005, the Supreme Court of Justice admitted the appeal for review for failure to rule on said claim. Consequently, on January 18, 2006, the Court of Appeals issued a new resolution to amend the point missing, but without changing the impugned initial decision that confirmed the trial court's sentence. In this new resolution, the appellate court concludes that: *"... through special appeals, it is impossible to make a critical assessment of the evidentiary means on which the sentence is based; supporting evidence cannot be challenged; and the court of appeals is not entitled to examine the motives leading to the trial court's decision."* The petitioner lodged an appeal for review against this decision, but it was declared out of order by the Supreme Court of Justice, through its Criminal Chamber on July 14, 2006. The petitioner indicates that he filed an appeal for legal protection before the Constitutional Court but it was rejected as out of order on May 23, 2007, on the grounds that the judge's performance conformed to the legally established duties without detriment to the rights protected by the Constitution and the laws. This resolution was notified to the petitioner on October 4, 2007.

8. For its part, the State of Guatemala claims that the criminal proceedings against the petitioner were conducted pursuant to the defendant's right of defense; that the petitioner's claims were always heard by the courts, because he accessed the remedies of ordinary appeals, appeals for review and constitutional appeals to allege his innocence; and that if these remedies were found out of order it was because the petitioner was guilty of the offenses attributed to him. Likewise, it submits that the petitioner's defense used several remedies through which it manifested its dissatisfaction with the trial court's decisions.

9. As regards Mr. Villeda's claim on the purported "sudden change" in the judicial classification, the State asserts that such claim is unfounded, as the guilty verdict was issued in accordance with the requirements set forth in the Code of Criminal Procedure. Moreover, it submits that as the record of the hearing of August 31, 2004 indicates in its "Closing remarks" section, proceedings were filed for aggravated continuous rape and acts of violent indecent assault; but the trial judge changed the charge to aggravated statutory rape since the prosecutor claimed that the initial charges did not correspond with the defendant's actions, requesting the court to change the charge to aggravated rape. The State alleges that before the guilty verdict was issued, the defendant and his lawyer accessed the supporting evidence used by the Public Prosecutor's Office to support the charges. Furthermore, as to the petitioner's claim on his being precluded from submitting evidence for his defense against all the aspects on which the judgment was founded, the State indicates that according to the verbatim record of the oral proceedings, prepared by the Second Trial Court for Environmental, Drug-trafficking and Criminal Offenses of Mixco, Mr. Villeda and his lawyer did exercise their right of submitting evidence for the defense, as necessary. The State moreover indicates that on February 5, 2010 the petitioner lodged an appeal for review that was later declared out of order.

10. Furthermore, the State of Guatemala denies the unlawful, arbitrary deprivation of liberty like the petitioner claims, since the initial arrest warrant was issued because the judge allegedly had reasonable grounds sufficient to believe that the petitioner had committed said offenses against his daughter, which, according to the State, were confirmed in the domestic proceedings. To conclude, the State asserts that the petitioner's rights were not infringed and requests in turn that the Commission declare this petition

inadmissible; for it considers that the IACHR should not act as a fourth instance supervising the judgments issued by domestic courts, which are well-founded and by which the petitioner was found guilty.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

11. With respect to the exhaustion of domestic remedies, the Commission notes that according to the information provided by the parties, on October 24, 2003 Mr. Villeda was arrested on a judicial warrant for the purported sexual assault to the detriment of his daughter. In the subsequent years, there was a criminal lawsuit that ended when the appeal for legal protection was settled in a way contrary to the petitioner's expectations, a resolution issued on May 23, 2007 and notified on October 4, 2007. Likewise, based on the information submitted by the State, the Commission notes that after said date, in 2010, the petitioner allegedly filed a special appeal for review that was declared out of order. In addition, the Commission notes that, in its responses, the Guatemalan State does not challenge the petitioner's exhaustion of domestic remedies or the petition's compliance with the requirement of timeliness; therefore, there is no controversy on this respect.

12. In light of these considerations, the Commission notes that the domestic legal remedies were actually exhausted when the resolution by the Supreme Court of Justice was notified to the petitioner on October 4, 2007; and that as the petition was lodged on April 8, 2008, it meets the requirements set forth in Articles 46.1.a and 46.1.b of the American Convention.

VII. COLORABLE CLAIM

13. In view of the elements of fact and law presented by the parties, the Commission believes that the alleged facts concerning the non-admission of proof expressly requested by the petitioner appears, *prima facie*, to be based on the domestic code of criminal procedure;³ along with the possible violation of the right to object to a judgment on the grounds that ordinary remedies allowing to review the assessment of evidence during the proceedings are not foreseen by the law, all these could establish violations of the rights set forth in Articles 7 (Personal Liberty), 8 (Fair Trial) and 25 (Judicial Protection) of the American Convention, in connection with the general obligation to respect rights established in Article 1.1, and the obligation to adopt domestic measures established in Article 2 thereof, to the detriment of Mr. José Luis Villeda. In support of these considerations, the Commission recalls that in a recent decision it concluded, referring specifically to the special appeal in Guatemala, which results from the way it is regulated, with grounds limited to errors of law or procedure but excluding the analysis, as a general rule, the review of the facts and the evaluation of the evidence, that in the decided case the right to appeal a conviction in the terms of Article 8.2.h of the American Convention had not been satisfied⁴.

14. As to the claim regarding the purported violations of Articles 5 (Human Treatment) and 9 (Freedom from Ex Post Facto Laws) of the American Convention, the Commission notes that the petitioner has not submitted arguments or evidence sufficient to *prima facie* consider their possible violation.

15. Lastly, as to the State's observation about a fourth instance, the Commission notes that by declaring this petition admissible, it does not seek to replace the domestic authorities' competence. In fact, the Commission will analyze in the merits stage whether the domestic proceedings conformed to the rights of due process and judicial protection and ensured Mr. Villeda's right of access to justice under the terms of the American Convention.

³ See for instance IACHR, Report 79/08, Petition 95-01, Admissibility, Marcos Alejandro Martín, Argentina, October 17, 2008, par. 44.

⁴ IACHR, Report 99/17, Case 11,782, Admissibility and Merits, Miguel Ángel Rodríguez Revolorio *et al.*, Guatemala, September 5, 2017, par. 136.

VIII. DECISION

1. To declare the instant petition admissible in relation to Articles 7, 8 and 25 of the American Convention, in connection with its Articles 1.1 and 2;
2. To find the instant petition inadmissible in relation to Articles 5 and 9 of the Convention;
3. To notify the parties of this decision;
4. To continue with the analysis on the merits; and
5. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Washington, D.C., on the 30th day of the month of November, 2017. (Signed): Margarete May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, James L. Cavallaro, and Luis Ernesto Vargas Silva, Commissioners.