

OEA/Ser.L/V/II.
Doc. 23
13 March 2020
Original: Spanish

REPORT No. 16/20
PETITION 452-11
REPORT ON ADMISSIBILITY

MILTON GERARDO REVILLA SOTO
VENEZUELA

Approved electronically by the Commission on March 13, 2020.

Cite as: IACHR, Report No. 16/20, Petition 452-11. Admissibility. Milton Gerardo Revilla Soto. Venezuela. March 13, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner	Milton Gerardo Revilla Soto and Venezuela Awareness
Alleged victim	Milton Gerardo Revilla Soto
Respondent State	Venezuela
Rights invoked	Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (privacy), 12 (freedom of conscience and religion), 13 (freedom of thought and expression), 15 (assembly), 16 (association), 17 (family), 23 (participation in government) 24 (equal protection), and 25 (judicial protection) of the American Convention on Human Rights ¹

II. PROCEEDINGS BEFORE THE IACHR²

Date of filing	March 31, 2011
Notification of the petition	June 15, 2017
State's first response	May 17, 2018
Additional observations from the petitioner	April 13 and May 31, 2011; April 16 and 26, 2012, April 15, May 2 and 28, August 16 and December 2, 2013; July 21 and August 15, 2017; February 20, June 8, September 5 and November 20, 2018

III. COMPETENCE

<i>Ratione personae</i>	Yes
<i>Ratione loci</i>	Yes
<i>Ratione temporis</i>	Yes
<i>Ratione materiae</i>	Yes, American Convention (deposit of instrument of ratification on August 9, 1977)

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 (privacy), 13 (freedom of thought and expression), 23 (participation in government), 25 (judicial protection), and 26 (economic, social, and cultural rights) of the American Convention in connection with Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof
Exhaustion or exception to the exhaustion of remedies	Yes, under the terms of section VI
Timeliness of the petition	Yes

V. SUMMARY OF ALLEGED FACTS

1. Mr. Milton Gerardo Revilla Soto (hereinafter "the petitioner" or "the alleged victim") claims that the State of Venezuela is responsible for the violation of his rights, having been subjected to warrantless detention, torture in prison, and prosecution without judicial safeguards or judicial independence, with the political intent being to use him for establishing a connection between journalists Patricia Poleo, Orlando Ochoa Terán, and Carlos Ramírez and the United States, allegedly by accusing him of leaking classified information on the moves of the Venezuelan government, to stop him from testifying at a legal proceeding in Spain about the alleged connection between the Venezuelan government, the Revolutionary Armed Forces of Colombia ("FARC"), and Basque Homeland and Freedom ("ETA").

2. The petitioner claims that he was a Venezuelan army officer appointed Mayor of Special Operations of the National Armed Forces at the border between Venezuela and Colombia and that while performing his duties, he discovered a relationship of support between the FARC, ETA, Hezbollah, and the Venezuelan government. He asserts that, consequently, on June 8, 2010, the General Directorate of Military Counterintelligence ("DIM") subjected him to arbitrary, warrantless detention at the Simón Bolívar

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

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

International Airport, in Maiquetía. He alleges being beaten, shackled, and driven to the headquarters of DIM in Caracas, and asked about the purported relationship between him, Venezuelan journalists (Patricia Poleo and Orlando Ochoa Terán), and the United States government. Allegedly, his belongings were seized, and a physician examined him that specifically recommended the administration of cardiac medication in view of his health condition. Later, he was taken to the pretrial detention cell at the Criminal Investigation Support Unit, where he was stripped naked, tortured with beatings while interrogated about his trip. He claims that, next, he was taken to a cell that had one mattress only and was permanently lit. A few hours later, DIM officials entered the cell and questioned him about his connection with the abovementioned journalists, while beating him and threatening to kill him and his family. According to the alleged victim, these incidents occurred in the absence of the public prosecutor or a defense counsel, and he was not told of the charges filed against him.

3. The petitioner alleges that on June 10, 2010, he was brought before the First Military Control Court, even though he was a retired officer, and charged with treason, espionage, and crime against the security of the Venezuelan Armed Forces, without a hearing with procedural guarantees before a competent tribunal previously established by law; for he was provided with an “on-duty” military public defender not acquainted with the record or the reason for his detention. He affirms that after the hearing, he was taken naked to a cell known as “*el cuarto de los locos*” (the room of the lunatics), a padded cell whose air conditioner changed from extreme cold to extreme hot and where he was isolated for 10 days and beaten. He claims that later, he was put in another room, given a suitcase with his belongings inside, and allowed to have bed linen and other personal items sent by his family as well as share his cell with other detainees.

4. The petitioner asserts that on July 19, 2010, the court appointed a public defender for him, who said that there were no real arguments to support his accusation and that his case was politically biased. Two days later, the petitioner was notified of three charges against him: treason, espionage, and crime against the security of the Venezuelan Armed Forces. He indicates that on July 23, 2010, he was brought before the prosecutor of his case, and the latter explained that his case was a politically biased inasmuch as it was aimed at persecuting journalists Patricia Poleo, Orlando Ochoa Terán, and Carlos Ramírez. He asserts that on July 24, 2010, he was coerced into making statements on Telesur television network explaining how the United States penetrated Venezuela and used these journalists to recruit Venezuelan army officers to overthrow the democratic government in Venezuela. He claims that to be freed, he had to make such statements; however, he told journalist Madelein García that he had been kidnapped without an arrest warrant, held in detention without a court order or prior inquiry; thus, he was not freed. He affirms that on July 28, 2010, he was brought before the court-martial, where the prosecutor read the final charges of espionage and crime against national security. His defense counsel said that he could not represent him anymore because this being a politically biased case, it could damage his military career.

5. The petitioner asserts that the preliminary hearing was held on September 26, 2010, and that he could not defend himself because the presiding justice said that his statement was not adequate for a preliminary hearing but for a trial, which meant that his case was going to trial anyway. He says that after denying a petition for a restraining order, the court ordered his confinement in cell no. 1 in a place known as “*la tumba*” (the tomb), a cell 1.5 m wide, 2.5 m long, and 3 m tall with permanent yellow lighting, an air conditioner controlled from outside and set to extreme cold or hot, and a wall with seepages and moisture. He alleges that the conditions in the cell caused him respiratory problems, notwithstanding which he did not receive specialized health care, and that since he was admitted in *La Tumba*, his visits as well as the duration of his telephone calls to his family and defense counsel were limited and all his correspondence was violated.

6. The petitioner alleges being deprived of requesting the Control Court for a change of defense counsel, and that on December 10, 2010, the First Military Control Judge in Caracas ruled that the deadline for appealing the decision adopted at the preliminary hearing was due, ordering to initiate an oral proceeding without allowing the petitioner to sign the court records, review the record, or prepare his defense. He claims to have been coerced, at different times, into incriminating journalist Patricia Poleo, with threats to separate him from his son forever. He submits that Colonel Freddy Ramírez Espósito offered him forced exile and/or a restraining order on condition that he made a video releasing him from liability for incidents of abuse or torture.

7. The petitioner asserts that on January 26, 2011, he was brought before the First Military Control Court for a restraining order and that after being put on parole that day, he had full access to the court

record. He noticed that the proceeding was riddled with defects of nullity due to the abovementioned facts, which showed a political intent to stop him from bearing witness at a lawsuit in Spain concerning the participation of DIM members in the relationship between ETA and the FARC. He asserts that in 2011, the chief justice of the trial court imposed restraining measures on him that prohibited his presence in the city of Caracas during the investigation into the facts of his case. Moreover, he alleges having reported to the chief justice of the court-martial the incidents of torture, the cruel, inhuman, and degrading treatment, his arbitrary detention, and the extortion he was subjected to; however, he has had no answer so far. He claims that on May 6, 2011, he received a summons from the Sixth Magistrates' Court in Madrid to appear as a protected witness; but that he was unable to travel to Madrid due to more stringent measures imposed on his freedom of movement.

8. He argues that his trial began on January 25, 2012, and his defense counsel submitted evidence showing the nullity of the record; that, however, all their claims were declared inadmissible as time-barred or as not fulfilling formal requirements, and that all their legal remedies were arbitrarily dismissed. He asserts that the trial was held in private, admitting members of the armed forces only, that the allegations of torture were examined outside the debate, and that on February 15, 2012, he was sentenced to six years and four months to life in prison and awarded the additional penalty of being barred from holding public office. Thus, he submits that on February 16, 2012, after being sentenced, he was taken to and confined at the Federal Prison of Military Convicts in Ramo Verde, in Fuerte Tiuna, without a copy of the court records or the substantive part of the judgment. According to the alleged victim, it took 54 days for the judgment to be published and 74 days for it to be notified; thus, on May 16, 2012, his defense counsel filed an appeal for annulment against the court records and the documents wrongfully attached to the case file. He asserts that the appeal was dismissed on June 21, 2012, and that on May 16 of the same year, he had lodged a constitutional amparo action with the court-martial, against the said judgment for violations of due process; that, however, the action was found inadmissible because in the proceedings was no copy of the document attesting the fact that his lawyer had sworn as his defense counsel.

9. According to the petitioner, while serving punishment, he was isolated and moved to another area, from the intellectual work area to the hard work area, despite his having informed about his bad health condition, and was forced to work the double, as a result of which he has two herniated disks. He alleges being subjected to mental torture in the form of selective isolation and verbal abuse. He alleges being denied specialized medical care from a cardiologist and an ophthalmologist in spite of his requests and a court permission, which caused him two episodes of anxiety. He moreover affirms that he was denied the right to finish his doctoral studies and excluded from the prison work program in order to stop him from working the time required to serve punishment. Furthermore, he recounts that on June 7, 2012, he asked to be transferred to the city of Barquisimeto to see his father, who was ill and eventually died that day before the request was granted on June 8—that day the petitioner was kept in a van for six hours in the sun.

10. The petitioner argues that on August 18, 2012, he filed an appeal for review to the Supreme Court of Justice for arbitrariness, but the court dismissed it on January 3, 2013. In addition, he claims that only on June 15, 2015, after a change of judges, was his appeal for review admitted and a reduction of one year, three months, and twenty-two days of the sentence awarded. He submits that on April 18, 2016, he was notified of the release order for serving punishment; but, at the same time, he and his son were threatened to death. He alleges that given the fact that in prison he was treated as a spy and a traitor, once released, he had difficulty in securing a job because he was excluded from employment in state bodies as well as private companies; for these were threatened to be closed if they hired him. He also reports that despite being a retired army officer, he and his son were forbidden to access military health services and that, in addition, he was forbidden to enter military facilities for being “a traitor to the revolution,” all incidents reported yet not investigated.

11. The State alleges that on February 15, 2012, the alleged victim was sentenced to six years and four months to life in prison for “crime against the security of the Armed Forces,” in accordance with Article 550 of the Organic Code of Military Justice, that he resorted to the Inter-American Commission before the criminal process was closed, and that he did not appeal his sentence. It contends that the petitioners do not refer to facts constituting human rights violations, but only express their disagreement with the decisions made in the framework of the domestic criminal proceeding that concluded with a conviction by the First Criminal Military Court in Caracas. It asserts that the petitioners seek that the IACHR undertakes the role of a court of appeals to review the facts and evidence already examined by the Venezuelan courts.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

12. The State argues that the petitioner resorted to the Commission before the criminal action filed against him concluded and without filing an appeal or an appeal for review, provided for in Articles 447 and 462 of the Organic Code of Criminal Procedure, against the conviction. It asserts that on August 10, 2012, the alleged victim's counsels filed with the Supreme Court of Justice, a motion to remit the case to a higher court, a motion which despite being inadequate in this case—for it is an exceptional remedy applicable to cases established in Article 107 of the Organic Law of the Supreme Court of Justice—shows that they continued filing remedies to change the judgment.

13. For his part, the petitioner argues that, concerning the allegations of torture, he filed reports to the chief justice of the court-martial in 2011, when he was in liberty, but they were not investigated. As to the criminal action, the alleged victim asserts that when he filed the petition to the IACHR, there was not yet a conviction, but that his main intention was to seek protection for his right to life; and that the process was arbitrary, illegal, and unfair. Likewise, he claims to have been denied access to the record during the review stage, thus, deprived of remedies effective to appeal his arbitrary conviction, and that he lodged all the remedies available, including an appeal for annulment on January 26, 2012, that was ruled out of order on February 7 that year. He claims that when the court of appeals dismissed his remedies, he filed an amparo action, which was found inadmissible. And on August 18, 2012, he filed an appeal for review with the Supreme Court of Justice, seeking the annulment of the case given the violations of due process of law. Therefore, he claims that domestic remedies were exhausted with the decision of the Criminal Court of the Supreme Court of Justice to declare his remedy inadmissible, issued on October 22, 2012. According to the alleged victim, the State is responsible for unwarranted delay because it was more than eight years before it took the measures necessary to clarify the violations of his rights and identify those responsible. Moreover, he asserts that the action was marked by “inception defects” as the State tried him in the military jurisdiction despite his being a retired officer, and by a power abuse that influenced the proceedings of the Venezuelan judiciary. In regard to his pretrial detention, he argues that at the preliminary hearing on September 29, 2010, he applied for a restraining order that was not granted until January 18, 2011. In addition, he asserts that in 2011, he reported his arbitrary pretrial detention to the chief justice of the court-martial.

14. In an early communication, the State questioned that the petition was filed to the IACHR when the domestic proceeding was still ongoing and, hence, before the petitioners had exhausted domestic remedies. The Commission notes that, indeed, the petition under study was filed before domestic remedies were exhausted. In this regard, the Commission reiterates that, based on its practice, the situation to be considered in order to determine the exhaustion of domestic remedies is that existing when such decision is made because the time of the filing and the time of the decision on admissibility are different.

15. The Commission observes that in the instant case, the petitioner, a Venezuelan retired military officer, was subjected to a criminal trial in the military jurisdiction and, nevertheless, the military court examined the claims the alleged victim filed on the alleged violation of his human rights. In this regard, the IACHR reiterates that the military jurisdiction is not appropriate and, therefore, does not provide an adequate remedy to investigate, prosecute, and punish alleged violations of the human rights enshrined in the American Convention, allegedly committed by members of the Armed Forces or with their cooperation or acquiescence. Thus, it considers that in the instant case, the exception set forth in Article 46.2 (b) and (c) of the Convention applies.³

16. Finally, considering the characteristics of the matter, the IACHR considers that the petition was filed within a reasonable time and that the requirement of timeliness is met.

VII. COLORABLE CLAIM

17. The Commission notes that this petition includes allegations regarding the purported arbitrary detention, the existence of irregularities or anomalies, and the alleged abuse of power in the criminal proceeding to the detriment of the guarantees of due process and the rights of defense and to a reasoned judgment, to keep him in prison; and the alleged physical abuse and damage to honor and reputation all may establish. Likewise, the Commission notes that the facts predicted in the petition are related to the deterioration of the alleged victim's health and the alleged denial of adequate medical care may establish.

³ IACHR, Report No. 78/18, Petition 1025-07. Admissibility. Gregorio Cunto Guillén *et al.* Peru. June 28, 2018, par. 15.

Furthermore, the alleged facts indicates the coercion that the alleged victim claims to have suffered to make public statements, and a lawsuit against him for allegedly leaking classified information to journalists.

18. In view of these considerations and after examining the elements of fact and law presented by the parties, the Commission considers that the claims of the petitioner are not manifestly unfounded and require a substantive study on the merits as the alleged facts, to be corroborated as certain could characterize violations of articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (privacy), 13 (freedom of thought and expression), 23 (participation in government), 25 (judicial protection), and 26 (social, economic, and cultural rights) of the American Convention, in relation to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof.

19. As for Articles 12 (freedom of conscience and religion), 15 (assembly), 16 (association), 17 (family), and 24 (equal protection) of the American Convention, the Commission notes that although the petitioners referred to these alleged violations, they did not submit allegations or specific information to support their assertions.⁴

20. Lastly, as for the State's claim about a fourth instance of jurisdiction, the Commission observes that declaring this petition admissible does not mean that it will replace the competence of national judicial authorities, but that in the merits stage, the Commission will analyze whether domestic proceedings were held pursuant to due process and judicial protection and ensured access to a fair trial for the alleged victims under the American Convention.

VIII. DECISION

1. To declare the instant petition admissible with regard to Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (privacy), 13 (freedom of thought and expression), 23 (participation in government), 25 (judicial protection), and 26 (social, economic, and cultural rights) of the American Convention, in relation to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof;

2. To declare the instant petition inadmissible with regard to Articles 12 (freedom of conscience and religion), 15 (assembly), 16 (association), 17 (family), and 24 (equal protection) 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 on the 13th day of the month of March, 2020. (Signed): Joel Hernández, President; Antonia Urrrejola, First Vice President; Flávia Piovesan, Second Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Margarete May Macaulay, Julissa Mantilla Falcón, and Stuardo Ralón Orellana, Commissioners.

⁴ IACHR, Report No. 40/06, Petition 11.214. Inadmissibility. Pedro Velásquez Ibarra. Argentina. March 15, 2006, par. 54.