

**REPORT Nº 89/05^[1]**

PETITION 12.103

INADMISSIBILITY

CECILIA ROSANA NUÑEZ CHIPANA

VENEZUELA

October 24, 2005

I. SUMMARY

1. On January 25, 1999, the Inter-American Commission on Human Rights (hereinafter "the Commission" or the "IACHR") received a petition lodged by the Venezuelan Program for Human Rights Education and Action (Provea) (hereinafter "the petitioners"), claiming the responsibility of the Bolivarian Republic of Venezuela (hereinafter "the State" or "the Venezuelan State") in the alleged violation of the right to a fair trial, freedom of movement and residence, and equal treatment with respect to the Peruvian citizen Cecilia Rosana Núñez Chipana (hereinafter "the alleged victim"), purportedly committed during extradition proceedings pursued against her in 1998.

2. The petitioners claim that the State is responsible for violating the rights of due process, movement and residence, and equal protection set forth in Articles 8, 22, and 24 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"). The petitioners attest that they exhausted the domestic remedies available under Venezuelan law and lodged the complaint within a period of six months following the exhaustion of domestic remedies.

3. In response, the Venezuelan State argues that in accordance with Article 47(2) of the American Convention, the petition must be declared inadmissible since it is a "reproduction of the petition lodged by the citizen Cecilia Núñez Chipana with the United Nations Committee Against Torture—a specialized agency in that field—in connection with the same incidents as are reported herein."

4. After analyzing the positions of the parties, the Commission concludes that it is competent to decide on the petitioners' claim and that the case is inadmissible under Articles 46 and 47 of the American Convention. Consequently, the Commission decides to inform the parties, to publish this report on inadmissibility, and to include it in its Annual Report.

II. PROCESSING BY THE COMMISSION

5. On January 25, 1999, the Commission received a petition lodged by the Venezuelan Program for Human Rights Education and Action (Provea) alleging violations of the right to a fair trial, to freedom of movement and residence, and to equal protection committed

against Mrs. Cecilia Rosana Núñez Chipana during extradition proceedings pursued against her in 1998.

6. On February 4, 1999, the Commission acknowledged receipt of the petition and recorded it as No. 12.103. On that same date the IACHR forwarded the relevant parts of the complaint to the Venezuelan State and asked it to submit its comments on the matter.

7. On May 4, 1999, the State requested an extension of the deadline for presenting its comments. On May 19, 1999, the Commission told the State that it had been given an additional 30 days in which to submit its observations.

8. On August 17, 1999, the State conveyed its comments on the petition, in which it requested that the complaint be ruled inadmissible. These comments were forwarded to the petitioners on August 19, 1999.

9. On September 17, 1999, the Commission received a reply from the petitioners, which was conveyed to the State for its comments the following October 13.

10. On July 18, 2000, the Commission communicated with the State, repeating the request for comments it had made the previous October 13. In that note, the Commission asked the State to submit its observations within the following 30 days. On January 26, 2001, the State submitted a note containing its comments on the petitioners' reply. This information was transmitted to the petitioners on February 12, 2001.

III. POSITIONS OF THE PARTIES

A. Petitioners

11. The petitioners claim that on February 16, 1998, Mrs. Cecilia Rosana Núñez Chipana, a Peruvian national, was arrested by members of the Intelligence and Prevention Services Directorate (DISIP) while at her place of work as a teacher. According to the petition, the arrest was based on an extradition request made by the Peruvian authorities, in which the alleged victim was accused of belonging to the "*Sendero Luminoso*" organization.

12. The petitioners claim the alleged victim was transferred to the offices of the DISIP in a fashion that constituted cruel treatment. They claim that Mrs. Núñez was not allowed out into the sunlight at any time for 85 days; that she was not allowed to bring in any reading material; that she was held in an unventilated cell of minimum dimensions that was fitted with approximately 32 fluorescent light bulbs that kept her at a suffocating temperature; and that for a period of several days the light bulbs were turned off, leaving her in total darkness. They also maintain that the alleged victim was frequently threatened with torture and with death. The petitioners also report that during her arrest, the alleged victim was prevented from holding private conversations with her lawyers. This was Mrs. Núñez's situation until May 15, 1998, when she was transferred to the premises of the National Female Orientation Institute in the city of Los Teques, where the circumstances constituting cruel treatment were "partially rectified." There she was allowed to talk with her lawyers in private, but "by then the extradition proceedings were at an advanced stage."

13. On March 2, 1998, the alleged victim's lawyers presented the Sixth First-Instance Criminal Court for the Protection of the Public Patrimony in Caracas with a habeas corpus filing in which they requested Mrs. Núñez's immediate release. The alleged victim's attorneys argued that her arrest had been irregular and that more than 15 days had gone by without her being officially told of the reasons for her detention. They also requested that the Embassy of Peru and the DISIP be summoned to inform the court of the reasons for her arrest and whether or not there really was an extradition order against Mrs. Núñez. On the following

March 4, the director of the DISIP told the court that the arrest had been carried out in accordance with a warrant for preventive arrest prior to extradition issued by the Joint Criminal Chamber for Terrorism Cases at the National Level of the Supreme Court of Lima, Republic of Peru. The petitioners state that it was only through this communication that they were officially informed of the extradition proceedings. They state that the habeas corpus filing was finally ruled groundless by the court, and that that decision was upheld on appeal.

14. The petitioners claim that although on February 26, 1998, the Peruvian Embassy in Venezuela formally told the Venezuelan government about the request for extradition and preventive custody prior to extradition, it was not until March 24, 1998, that the alleged victim was officially told, by the 37th First-Instance Criminal Court of the Federal District Judicial District that there was an extradition order out against her. In addition, prior to that notification, on March 8, 1998, the Attorney General of the Republic had already lodged, with the Supreme Court, a deed setting out the Public Prosecution Service's favorable opinion with respect to that extradition. Later, on March 25, 1998, the 37th First-Instance Court, acting on the instructions of the Supreme Court of Justice, took a statement from the alleged victim, who was assisted in that undertaking by her lawyers. On March 26, the court returned the case file, with copies of the statement, to the Supreme Court of Justice. On May 14 of that same year, the Supreme Court's Criminal Chamber set a date for the defense lawyers to submit their conclusions. On that same date, the defense lodged a document opposing extradition on the basis that there was no grounded evidence to incriminate the alleged victim in the actions of which she was accused.

15. On June 16, 1998, the Supreme Court of Justice resolved to extradite Mrs. Núñez Chipana, and this decision was implemented the following July 3. Upon arriving in Peru, Mrs. Núñez was immediately brought before the criminal courts and sentenced to a 25-year prison term. The petitioners allege that the extradition was carried out by the executive branch of government, in spite of the fact that decision was still pending on an *amparo* remedy lodged against the Supreme Court's judgment by Mrs. Núñez's defense counsel on June 19, 1998. This remedy was finally ruled inadmissible by the Supreme Court on July 7, 1998. The petitioners hold that by expelling the individual for whom the remedy was sought, the executive branch "rendered the *amparo* action void and violated the principle of judicial autonomy."

16. With respect to her request for asylum in Venezuela, the petition reports that on February 27, 1998, Mrs. Núñez Chipana lodged a verbal request for asylum with the highest ranking guard at the DISIP facility. The next day, her lawyers attempted to have her sign a written application for asylum and refuge, but DISIP officials prevented her from signing the document. Finally, on March 24, 1998, after being taken to the Criminal Court to give her statement, Mrs. Núñez was able to sign the asylum request. The petitioners claim that the Venezuelan State never responded to this application.

17. The petitioners claim that with other procedural irregularities, the Venezuelan State also violated Mrs. Núñez Chipana's right to a fair trial in the proceedings that led to her extradition: First of all, in that the authorities did not inform Mrs. Núñez promptly and in detail about the reasons for her arrest; secondly, in that the State violated the right of presumption of innocence by telling the media, shortly after her arrest, that Mrs. Núñez belonged to the *Sendero Luminoso* organization; additionally, in that Mrs. Núñez Chipana was denied the opportunity to communicate freely and in privacy with her defense counsel; moreover, in that the principle of public trials was also violated when the Supreme Court ruled the case file secret; finally, in that her right to appeal the ruling to a higher court was denied when, as they claim, Mrs. Núñez was extradited before the *amparo* remedy filed with the Supreme Court could be decided on.

18. The petitioners base their claims regarding the alleged violation of the right to

equality before the law in the case at hand on the grounds that the competent judge "seriously violated the principle of equality of arms" by totally ignoring the final written documents lodged by Mrs. Núñez Chipana's defense team. She also, they claim, suffered a violation of the right to seek and receive asylum through the failure to respond to the various asylum requests she presented and the "various obstacles that the Venezuelan authorities placed in her path in preparing those applications."

19. As regards the admissibility requirements, the petitioners believe that the petition reports violations of rights protected by the Convention committed by a state party; that the claim regarding those rights violations has not been submitted to any other international proceeding; that there are no other legal remedies available under Venezuelan law and that those that do exist have been exhausted; and that this petition was lodged within a period of six months following the exhaustion of domestic remedies. Consequently, the petitioners request that "this complaint be processed in compliance with the provisions of Articles 44 to 51 of the American Convention and of Article 18(a) of the Statute of the Commission."

B. State

20. The State asks the Commission to issue a "prior inadmissibility ruling" on this complaint, as provided for in Article 47(2) of the American Convention, since it is a "reproduction of the petition lodged by the citizen Cecilia Núñez Chipana with the United Nations Committee Against Torture—a specialized agency in that field—in connection with the same incidents as are reported herein." The State further claims that, irrespective of the above, the petition attempts to misrepresent the extradition process, making it out to be a confrontational procedure instead of the brief, summary proceeding that it is, in order to accuse the State of nonexistent human rights violations.

21. This case has, the State says, been heard by another international body. The petition itself acknowledges that on April 30, 1998, Mrs. Núñez's defense lawyer lodged a filing against the Venezuelan State with the United Nations Committee Against Torture, claiming violations of Article 3 of the International Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. As a result of this, on May 11, 1998, the Secretary-General of the United Nations conveyed that communication to the Venezuelan Government and asked it provide the pertinent information and comments. On July 2 of that year, the State sent its comments, which were disputed by the petitioner on September 21, 1998. On November 10, 1998, during the 21st session of the Committee against Torture (CAT), the complaint was declared admissible; the Committee immediately proceeded to study the merits of the case and declared the State of Venezuela responsible for failing to comply with its obligation of not proceeding with the complainant's extradition and thereby violating Article 3 of the International Convention against Torture.

22. According to the State, the complaint lodged with the Commission and the one submitted to the Committee against Torture have common denominators in their alleged victims, their expositions of the facts, and their identical legal claims. Thus, Mrs. Núñez Chipana told the Committee against Torture that she was arrested by DISIP authorities on charges of involvement in placing an explosive device at the Congress of the Republic of Venezuela. The petitioner also claimed that from the first moment of her arrest, she was identified as a member of the Sendero Luminoso organization. She also claimed she was kept in the DISIP detention facility and received treatment that did not respect her human rights: she was prevented from signing documents at her place of detention, she was denied access to sunlight, and she was kept in a small, unventilated dungeon.

23. The State notes that in Mrs. Núñez's filing with the CAT of September 21, 1998, the petitioner invoked and called on the Committee to rule on the alleged violations of due

process committed by the State of Venezuela in her extradition proceedings. The alleged violations were: having issued judgment without consideration of the document lodged with the Criminal Chamber of the Supreme Court of Justice by her lawyers; not having given her timely notification of the reasons for her arrest; and having carried out the extradition ruling before resolution of the *amparo* remedy she had filed. The State claims that those allegations are identical to those made by the petitioners before the Inter-American Commission.

24. The State also holds that the CAT was competent to rule on the violations identified by the petitioner. In the State's view, the rules governing the competence and operations of the Committee clearly enable it to issue a ruling on the expulsion, repatriation, or extradition of a person as well as on violations of due process suffered by a person in expulsion, repatriation, or extradition proceedings. Thus, Articles 2(1), 3 and 6 of the Convention against Torture stipulate how state bodies are to act in processing expulsion, repatriation, and extradition proceedings – namely, in accordance with due process.

25. The State argues that “the allegedly violated rights that Núñez Chipana has reported to the Commission can basically be summarized as violations of due process.” Following that line of thought, says the State, it is clear that the petition lodged with the Commission essentially entails complaints about rights closely related to the guarantee of due process. The State concludes that the Committee against Torture has already ruled on this matter and that the instant complaint is merely a reproduction of the other petition that was previously presented to and decided on in that international venue. In consideration whereof, admitting this complaint would imply double jeopardy for the Venezuelan State in connection with one single incident, and that situation is unacceptable in all legal areas and fields, including human rights law.

26. Consequently, the State holds that Articles 46(1)(c) and 47(d) of the Convention give rise to the principle of “a chosen venue” and, from the application of that principle, it is clear that the simultaneous or consecutive lodging of petitions regarding the same incidents and guarantees is inadmissible, as in the case at hand. For those reasons, the State requests that this petition be declared inadmissible in that it addresses a situation that has already been decided on by another international organization.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence of the Commission *ratione materiae*, *ratione personae*, *ratione temporis*, and *ratione loci*

1. *Ratione loci*

27. The Commission has competence *ratione loci* in that the instant petition holds that the alleged victim was subject to the jurisdiction of the Venezuelan State at the time that the alleged incidents occurred. Venezuela has been a member of the Organization of American States since 1948, when it ratified the OAS Charter, and it has been subject to the competence of the Commission under the terms of the American Convention since August 9, 1977, when it deposited the corresponding instrument of ratification.

2. *Ratione temporis*

28. The information above is also relevant to the claim that the Commission has competence *ratione temporis*, since the alleged incidents occurred after the American Convention came into force for Venezuela.

3. *Ratione personae*

29. The petitioners are entitled, under Article 44 of the American Convention, to lodge complaints with the IACHR. The petition names, as the alleged victim, Mrs. Cecilia Rosana Núñez Chipana; consequently, the Commission has competence *ratione personae* to examine the complaint. The State ratified the American Convention on August 9, 1977.

4. *Ratione materiae*

30. As regards its competence *ratione materiae*, the Commission notes that the petitioners claim that the State violated guarantees of due process (Article 8), movement and residence (Article 22), and equal protection (Article 24) that are protected by the American Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

31. Article 46(1) of the American Convention rules that for a petition to be admissible, the remedies available under the State's domestic jurisdiction must first have been exhausted. The petitioners claim that they did pursue and exhaust the domestic remedies available in Venezuelan law. They hold that the internal judicial discussion was concluded with the Supreme Court of Justice's *amparo* judgment of July 7, 1998. The State, in turn, has neither denied or challenged the petitioner's claim. Consequently, the Commission believes that the requirement set forth in Article 46(1) of the American Convention has been met.

2. Filing period

32. Article 46(1)(b) of the Convention rules that all petitions must be lodged within a period of six months from the date on which the petitioners were notified of the final judgment whereby domestic remedies were exhausted. The petitioner maintains that the final decision under domestic law was given on July 7, 1998, and the petitioner lodged the complaint with the Commission on January 25, 1999. The State has made no counterclaim in this regard. The Commission therefore concludes that the petition was presented before the deadline set by Article 46(1)(b) of the Convention.

3. Duplication of international proceedings and *res judicata*

33. The State asked for the case to be declared inadmissible, claiming that the requirements contained in Articles 46(1)(c) and 47(d) of the Convention, dealing with the duplication of proceedings at another international venue, had not been met. The State argued that this case involved the same victim, incidents, and petitions as a filing lodged with the Committee against Torture of the United Nations and already ruled on by that body in 1998.

34. The petitioners responded to this argument by the State by holding that the scope of the petition lodged with the Committee against Torture was different from the scope of this filing. They hold that the complaint lodged with the CAT was limited to the violation of Article 3 of the Convention against Torture, which deals with the principle of non-return, while the filing with the Inter-American Commission addressed different rights violations committed with respect to the same person. The petitioners claim that the violation of due process were not placed before the CAT and, as a result, the Committee did not rule on the violations that were later brought to the attention of the Commission. With this argument the petitioners conclude that the principle of *res judicata* does not apply.

35. Article 47(d) of the American Convention rules that the Commission will find inadmissible any petition that:

is substantially the same as one previously studied by the Commission or by another international organization.^[2]

36. The Commission will now determine whether in the case at hand it is facing the

conditions described in that article. In this regard, the Commission has ruled that:

Where a matter is first presented before one international proceeding, and is then essentially replicated and placed before another, the issue of duplication may be readily identified and disposed of. Where successive petitions do not clearly replicate each other, further analysis may be required. The fact that a communication involves the same person as a previously presented petition is just one element of duplication. Regard must also be had to the nature of the claims presented and the facts adduced in support thereof. The presentation of new facts and/or sufficiently distinct claims about the same person could, under certain circumstances, and with other applicable requirements having been met, provide the basis for consideration. It may also be noted that, where a second presentation of claims concerns rights which were not covered by the subject matter jurisdiction of the body before which a first petition was presented, the matter will not, in principle, be barred as duplicative.^[3]

Further:

While the Commission has had occasion to apply Articles 46(c) and 47(d) in its practice, it has not previously explained in detail what is meant by a matter which is "substantially the same," and finds it pertinent to clarify what is required in this regard under the terms of Article 47(d) of the Convention, and Article 39 of its Regulations. Having examined the jurisprudence of the European human rights system, as well as that of the UNHRC, and consistent with its own past practice, the Commission observes that a prohibited instance of duplication involves, in principle, the same person, the same legal claims and guarantees, and the same facts adduced in support thereof. This essentially means that a petitioner cannot file a petition before the UNHRC complaining of the violation of a protected right or rights based on a factual predicate, and then present a complaint before this Commission involving identical or integrally related rights and facts which were or could have been raised before the UNHRC.^[4]

37. Thus, for a case to be deemed as one of duplication or international *res judicata*, the petition must be being studied or have been resolved by an international organization with the competence to adopt decisions regarding the specific facts contained in the petition and to order measures aimed at effectively resolving the dispute in question.^[5] The Commission has in the past referred to various international proceedings not deemed to meet those characteristics and, consequently, in which the duplication is not deemed to apply.^[6] The Commission has also ruled on the inadmissibility of petitions previously submitted to the United Nations Human Rights Committee, the competence of which is similar to the Commission's, and consequently on the duplication described in Articles 46(1)(c) and 47(d) of the American Convention.^[7] In connection with this, the Commission notes that the procedure for individual communications set by Article 22 of the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment empowers the Committee to take decisions on specific incidents and to adopt measures for resolving disputes that are similar to those established by the American Convention for the Inter-American Commission on Human Rights. Consequently, the competence and powers of the Committee against Torture of the United Nations in the resolution of individual communications under those provisions gives rise to international duplication as described in Articles 46(1)(c) and 47(d) of the Convention.

38. Having established this, the Commission will analyze whether the principle of *res judicata* applies in the case at hand. First of all, the Commission finds that there is no dispute that the alleged victim in the two petitions is the same. The Commission also sees that the same nongovernmental organization acted as the petitioner before the two international venues. Secondly, the Commission notes that the Committee against Torture, during its 21st session, studied Communication No. 110/1998, lodged on behalf of Mrs. Cecilia Rosana Núñez Chipana against the Republic of Venezuela. In that analysis, the Committee concluded that:

In the light of the above, the Committee, acting in accordance with article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, considers that the State party failed to fulfill its obligation not to extradite the author, which constitutes a violation of article 3 of the Convention.^[8]

39. The Commission finds that the facts alleged before it on January 25, 1999, are fully related to the facts previously analyzed and decided on by the Committee against Torture. This can be seen both in the petitioners' submissions to the Committee and in the conclusions of the international body itself. The complaint alleging violations of the right of due process, of the right to seek and receive asylum, and of the right to equal treatment, together with the risk of suffering torture, constituted the factual basis that the Committee studied and decided on. This can be seen in the Committee's report, which transcribes the petitioner's claim as follows:

Comments by the author

5.1. In her comments on the observations by the State party, the author maintained that the extradition took place even though legal remedies had not been exhausted, at the time when the Supreme Court was considering an application for amparo with a request for precautionary measures against the decision granting extradition. The extradition took place on 3 July and only on 7 July 1998 did the Court rule on the application for amparo, declaring it inadmissible, together with the precautionary measure requested. In addition, the transfer to Peru took place by surprise, since the date was not communicated in advance either to the author or to her counsel.

5.2. The Supreme Court decision did not refer at all to the content of the reports submitted by the defense, but did refer at length to the opinion in favor of extradition issued by the Attorney-General of the Republic. The decision also did not refer to the provisional measures requested by the Committee, even though they were invoked by the defense. Only the dissenting judge referred to those measures, also noting that there were no grounds for convicting the author of the charges against her, that conditions in Peru did not guarantee due process and that international organizations had stated their views on flagrant human rights violations in Peru. As an argument against the opinion of the Supreme Court, the author also referred to the political nature of the offences with which she was charged in Peru.

5.3. The author said that neither she nor her counsel had received any reply in respect of the application for asylum, contrary to what the Minister for Foreign Affairs had stated when questioned by the Chamber of Deputies' Standing Committee on Domestic Policy. According to what he said, the Minister had informed the author, in a letter dated 27 March 1998, that the application for asylum did not contain evidence of political persecution and that the final decision lay with the Supreme Court.^[9]

40. Consequently, the Commission holds that since this complaint substantially reproduces a filing examined by another international organization as described in Article 47 (d) of the Convention, the petition must be declared inadmissible as required by that provision of the Convention. In consideration whereof, the IACHR refrains from examining the other admissibility requirements set out in the Convention because they have been rendered moot.

V. CONCLUSIONS

41. Based on the foregoing considerations of fact and law,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this petition inadmissible.
2. To give notice of this decision to the parties.
3. To publish this decision and to include it in its Annual Report to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on the 24 day of October 2005. (Signed): Clare K. Roberts, President; Susana Villarán, First Vice-President; Paulo Sérgio Pinheiro, Second Vice-President; Commissioners Evelio Fernández Arévalos, José Zalaquett and Florentín Meléndez.

[1] Commissioner Freddy Gutiérrez, a Venezuelan national, did not participate in the discussion of this report or vote on it, in compliance with Article 17(2)(a) of the Commission's Rules of Procedure.

[2] The Inter-American Court has interpreted this article as follows:
The phrase "substantially the same" signifies that there should be identity between the cases. In order for this identity to exist, the presence of three elements is necessary, these are: that the parties are the same, that the object of the action is the same and that the legal grounds are identical.
Inter-Am.Ct.H.R., Case of Baena Ricardo *et al.*, Preliminary Objections, Judgment of November 18, 1999, Series C No. 61, paragraph 53.

[3] IACHR, Report No. 96/98 (Inadmissibility), Case 11.827, Peter Blaine v. Jamaica, December 17, 1998, paragraph 42.

[4] *Id.*, paragraph 43.

[5] See, for example, IACHR, Resolution 33/88, Case 9.786 (Peru), in OEA/Ser.L/V/II.76, doc. 10, September 18, 1989, sections (d) to (h).

[6] IACHR, Report 22/05 (Admissibility), Case 12.270, Johan Alexis Ortiz v. Venezuela, paragraph 49; Report 30/99, Colombia, Case 11.206, César Chaparro Nivia and Vladimir Hincapié Galeano, March 11, 1999, paragraphs 25 and 26.

[7] See, for example, IACHR, Resolution 33/88, Case 9.786 (Peru), in OEA/Ser.L/V/II.76, doc. 10, September 18, 1989, sections (d) to (h). Report No. 96/98 (Inadmissibility), Case 11.827, Peter Blaine v. Jamaica, December 17, 1998, paragraph 42.

[8] UN, Committee against Torture, Cecilia Rosana Núñez Chipana v. Venezuela, Communication No. 110/1998, U.N. Doc. CAT/C/21/D/110/1998.

[9] UN, Committee against Torture, Cecilia Rosana Núñez Chipana v. Venezuela, Communication No. 110/1998, U.N. Doc. CAT/C/21/D/110/1998, paragraph 8.