

REPORT Nº 77/07
PETITION 977-06
ADMISSIBILITY
ANTONIO ZALDAÑA VENTURA
PANAMA
October 15, 2007

1. SUMMARY

1. On August 21, 2006, the Inter-American Commission on Human Rights (hereinafter referred to as "the Commission") received a petition lodged by Antonio Zaldaña Ventura, a Salvadoran national, (hereinafter referred to as "the petitioner") in which he claims that he was detained by Immigration at the International Airport of Tocumen in Panama City on April 15, 2004. While spending four months in detention in Panama he claims that he was not informed of his right to seek consular assistance from the Government of El Salvador nor was he permitted to contact the Salvadoran Consulate in Panama in violation of Article 8 of the American Convention on Human Rights (hereinafter "American Convention") informed by Article 36 of the Vienna Convention on Consular Relations (hereinafter "Vienna Convention"). The petitioner claims that he was forced to sign documents to facilitate his extradition to the United States where, subsequently, he was charged with drug-trafficking and sentenced on June 24, 2005 by the US District Court for the Southern District of New York to serve 135 months (11 years) in prison. Mr. Zaldaña claims that he is innocent of the charges and that he was forced to consent to his own extradition from Panama to the United States and that Panama had no reason to extradite him. In a later submission, Mr. Zaldaña alleged violations of the Bilateral Extradition Treaty between the US and Panama which negatively affected his rights.

2. The State responded to the petition on February 20, 2007 and informed the Commission that the detention and extradition on August 18, 2004 of Mr. Antonio Zaldaña Ventura were carried out in conformity with Panamanian law. The State describes in considerable detail the different steps involved in the processing of the extradition request.

3. After analyzing the positions of the parties the Commission concludes that it *has jurisdiction* to decide on the complaint presented by the petitioners and that the case is admissible, under Article 46 of the American Convention. The Commission has decided to declare the case admissible under Article 8 of the American Convention in connection with Articles 1(1) and 2 thereof and inadmissible as regards Article 7 of the American Convention and the other allegations presented since they do not fall under the Commission's jurisdiction. As a consequence, the Commission will serve notice of its decision to the parties concerned and will publish the present admissibility report in its Annual Report.

II. PROCESSING BY THE COMMISSION

4. The original petition was filed on August 21, 2006 by the petitioner and additional information, supplementing the petition, was received on September 4th and November 6, 2006. On December 21, 2006, the Commission communicated the petition and all the additional information presented to the State in accordance with Article 30 of its Rules of Procedure and granted the State a two-month period within which to reply. On February 22, 2007, the Commission received the State's response to the petition and the response was transmitted to the petitioners on March 16, 2007. On March 16, 2007, the Commission requested the petitioners to present their observations on the State's response within the period of one month. On April 10, 27 and May 15, 2007, the petitioner submitted his observations to the State's response and on June 4, 2007 these observations were transmitted to the State. Additional information was received from the State on July 24 which was transmitted to the petitioner on July 31, 2007. The Commission considered the petition during its 128^o period of sessions and agreed to request the State to present information regarding implementation of Article 36 of the Vienna Convention on Consular Relations in Panamanian law. On August 6, 2007, it requested that this information be presented within one month. No information on this issue was received from the State.

The petitioner presented additional information on August 22, 2007 which was transmitted to the State on September 4, 2007. No further information was received from the parties.

III. POSITIONS OF THE PARTIES

A. The Position of the Petitioner

5. On August 21, 2006, Antonio Zaldaña Ventura filed a petition with the Inter-American Commission.

6. Mr. Zaldaña states that on April 15, 2004, he boarded an airplane approximately at 9:00 pm at the International Airport of El Salvador, with the necessary and corresponding identity documents. He claims that in no country in the world could a national leave his native land if an international arrest warrant were pending against him.

7. When Antonio Zaldaña Ventura disembarked from the plane, an hour later, at approximately 10:00 pm, at the Tocumen International Airport in Panama, where he claims that he was arrested without the production of a legal arrest warrant. He claims that a Salvadoran informant telephoned the American Embassy in Panama to have him arrested because the U.S. Government thought that he was the "right hand" of a Mexican international drug-trafficker. Mr. Zaldaña Ventura claims that he never had anything to do with drug-trafficking and that he is innocent of the charges. He was extradited from Panama to the United States where he received a criminal sentence of 11 years and three months from a US Court and is currently in a federal prison in the United States for a crime that he claims he never committed.

8. The petition alleges that Antonio Zaldaña Ventura was not informed, in a timely manner, in Panama, of his right to contact and communicate with the consular officers of El Salvador, his native land. The failure to provide Mr. Zaldaña with this information, it is charged, deprived him of a human right to consular notification, set forth in the Vienna Convention on Consular Relations, and the ability to completely defend against the request for extradition filed by the United States with the Panamanian Government. Article 36 of the Vienna Convention on Consular Relations provides that when a foreign national is "arrested or committed to prison or to custody pending trial or is detained in any other manner," the appropriate authorities within the receiving State must him "without delay" of his rights to have his native country's local consular office notified of his detention. With the detained national's permission, a consular officer from his country may then converse and correspond with him and arrange for his legal representation. As a consequence of the failure to provide Mr. Zaldaña with information regarding his right to consular notification, the petitioner argues that Panama is responsible internationally for the violation of Articles 7 (arbitrary detention) and 8 (right to due process and a fair trial) of the American Convention in conjunction with the obligations assumed by the State under Articles 1(1) and 2 thereof and Article 36 of the Vienna Convention on Consular Relations. The petitioner submitted a letter from the Consul General of El Salvador in Panama dated August 24, 2006 which stated that the Consulate had not received notification from the Panamanian Government of Mr. Zaldana's detention. The letter states, in pertinent part, the following:

At your request, and on the basis of the records kept by this Consulate General in 2004, I wish to report that, in relation to your detention by the Technical Judicial Police (PTJ) of Panama on April 15, 2004, your detention was not reported to this Consulate as stipulated in international treaties on the matter; only on August 2, 2004, was note Ref. A. J. No. 2032, signed by Mr. Otto A. Escartín Romero, Assistant Director General for Juridical and Treaty Affairs of the Ministry of Foreign Affairs of Panama, sent to this Consulate, requesting us to prepare a safe-conduct for your transfer to the United States of America, in execution of the extradition order issued by the Panamanian foreign ministry, No. 825, dated July 7, 2004.

The safe-conduct was not issued, because we were subsequently informed that the ordinary passport had been found.

Prior to August 2, 2004, this Consulate General was not aware of the detention of Mr. Antonio Zaldaña Ventura.

9. The petitioner also submitted a letter dated April 16, 2004, from the Attorney General to the Director of the Technical Judicial Police, informing it of the detention on April 16th of Antonio Saldana-Ventura, also known as “Guillermo Saldana”, “Jose Saldana” and “Jorge Saldana”, for a period of 60 days since his extradition was being sought by the United States for criminal charges relating to drug trafficking and that he would be placed at the disposition of the Ministry of Foreign Relations. Pursuant to the Constitution and the Law, the letter continues, at the time of his detention he must be notified of his rights and that he has the right to a defense lawyer; in the case that he lacks resources, a defense lawyer is to be named within 24 hours to assist him.

10. The petitioner also included the “Minutes of the Surrender” a one page document that is signed by Otto A. Escartin Romero, the Minister of Foreign Relations of Panama and Jim Erwin of the US Embassy, as well as by two custodians of the US Government, regarding the surrender of Antonio Zaldaña Ventura to the US pursuant to the Bilateral Extradition Treaty and the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.(hereinafter “the Anti-Drug Convention”). The surrender was carried out at 8:00 a.m. on August 18, 2004 at the International Airport of Tocumen in Panama City and the Minutes indicate that Mr. Zaldaña “voluntarily” surrendered to the extradition once he was notified of the decision. The petitioner alleges that he was told he would remain in detention for 5 or 6 years in Panama if he did not sign a statement to the effect that he “voluntarily” surrendered to the extradition.

11. In a letter providing additional information, received on November 6, 2006, the petitioner alleged further violations of other international instruments, viz. Article 6 of the Bilateral Extradition Treaty between the US and Panama which provides a maximum of 60-days detention following arrest in alleged violation of Article 7 of the American Convention. He also alleged a violation of Article 8 of the Bilateral Extradition Treaty that provides that an individual may not be punished for a crime other than the one for which he was extradited. He further claimed that he was coerced into agreeing to his own extradition to the United States, which was effectuated on August 18, 2004, to answer charges of crimes related to drugs (international trafficking). Mr. Zaldaña claimed that he was warned that he would spend 5 to 6 years in detention in Panama if he did not sign a statement of the effect that he “voluntarily” agreed to the extradition. He claimed that Otto Escartin Romero, the lawyer of the Panamanian Ministry of Foreign Relations, dictated to him the statement that he signed. In addition, during the hearing in the US District Court for the Southern District of New York on February 1, 2005, he claims that he was misled into pleading guilty to charges of drug-trafficking by his court-appointed lawyer who told him that if he did not so plead he would be sentenced to 30 years in prison. Mr. Zaldaña has less than an eighth grade education and denies any activity relating to drug-trafficking for which he is convicted and sentenced to serve 135 months (i.e. 11 years) in prison in the United States.

12. In a letter received on April 10, 2007, the petitioner informs the Commission that he sought to communicate with his Consulate while in detention in Panama and that the response was that he had to contract a lawyer. When he was arrested, he claims that he had \$3,700 in his possession. He claims that a guard of the Judicial Technical Police informed a lawyer, Mr. José Luis Abrego about his case and required that Mr. Zaldaña sign a power of attorney in order to reclaim his belongings, including the \$3,700. Mr. Zaldaña claims that the lawyer promised to secure his freedom within 24 hours but he never reappeared again. Mr. Zaldaña claims that no lawyer was permitted to visit him unless he signed a power of attorney and that is why he signed so many powers of attorney.

B. The Position of the State

13. The State responded to the petition on February 20, 2007 and informed the Commission that the detention and extradition on August 18, 2004 of Mr. Antonio Zaldaña Ventura were carried out in conformity with Panamanian law. The State describes in considerable detail the different steps involved in the processing of the extradition request.

1. The Extradition request proceedings

14. The State informed the Commission that the US Embassy, by Note No. 412 of April 15, 2004, requested the Ministry of Foreign Relations of Panama to detain, for the purposes of extradition, the Salvadoran citizen Antonio Zaldaña Ventura, based on the UN Anti-Drug Convention and the Bilateral Extradition Treaty signed with the United States in 1904. The US Note requested that all the articles in Mr. Zaldaña's possession at the time of his arrest be seized, since they could serve as evidence and might be product of his offenses. Mr. Zaldaña claims that \$3,700 dollars in his possession, *inter alia*, was seized.

15. The Ministry of Foreign Relations of Panama, the State informed, pursuant to Article 6(8) of the UN Anti-Drug Convention and Article IV of the Bilateral Extradition Treaty and Article 2502 of the Judicial Code of Panama, by means of Note D.M. No. 995 of April 15, 2004 requested the Attorney General (the Panamanian authority authorized to issue arrest warrants) to arrest Mr. Zaldaña for the purpose of extraditing him.

16. The response of the State pointed out that the arrest was carried out by means of an ruling of April 16, 2004, based on Article 6(8) of the UN Anti Drug Convention and Article VI of the Bilateral Extradition Treaty of 1904 and Article 2502 of the Judicial Code of Panama that ordered the preventive detention for the purposes of extradition of Mr. Antonio Zaldaña Ventura and that he be placed at the orders of the Ministry of Foreign Relations for a period of sixty days, counted from the date of his detention in Panama, a period within which the United State was required to formalize its announced request for extradition.

17. The Technical Judicial Police of Panama, the State added, by means of Note No. DG-01-301-04 of April 19, 2004 communicated to the Ministry of Foreign Relations that at 10:00 pm on April 15, 2004, agents of the National Office of Migration and Naturalization of the Justice Ministry arrested Mr. Antonio Zaldaña Ventura in the International Airport of Tocumen, and that he was placed at the disposition of the Ministry of Foreign Relations once he was positively identified as the person whose extradition was sought.

18. The State informed further that Mr. Antonio Zaldaña Ventura, by means of his lawyer, Jose Luis Abrego, presented a writ of habeas corpus before the plenary of the Supreme Court. In compliance with Articles 2585, 2586 and 2587 of the Judicial Code of the Ministry of Foreign Relations, the State responded to the writ of habeas corpus by means of Note D.VM. No. 1141/A.J. of April 29, 2004.

19. The State informed that the writ of habeas corpus was resolved by the plenary of the Supreme Court on May 28, 2004, in a decision which declared the detention of Mr. Zaldaña Ventura to be legal. The Justices pointed out that "in conformity with the preceding paragraphs, the plenary of the Court is of the view that the detention of Mr. Antonio Zaldaña Ventura had not violated his right to due process, as his lawyer alleged. This is so, given that in conformity with the terms of Article 2502 of the Judicial Code in relation to Article 4 of the Bilateral Extradition Treaty of 1904 between the US and Panama, the provisional detention - for a maximum period of 60 days - of an individual who is being sought by a foreign authority, the mere notification by diplomatic mail will be sufficient."

20. The State further explained that by means of a power of attorney presented to the Ministry of Foreign Relations on April 20, 2004, Mr. Antonio Zaldaña Ventura named as his legal representative the law firm Remon & Associates. Nevertheless, by means of a second power of attorney presented to the Ministry of Foreign Affairs on May 28, 2004 he granted special power to the lawyer Abner Alvarez Morales, to represent him during the extradition proceedings against him. By means of another power of attorney presented on June 1, 2004, Mr. Antonio Zaldaña Ventura named Orlando Alonso Rodríguez his representative during the extradition proceedings.

21. The US Embassy, by means of Note 781 of June 10, 2004, the State explained, received by the Ministry of Foreign Relations on June 11, 2004, formalized the extradition request against the Salvadoran citizen, Antonio Zaldaña Ventura, for the alleged commission of drug related crimes, and the documentation supporting the request was provided.

22. In compliance with the terms of Article 41(2) of Law 23 of December 30, 1986, which regulates extradition in drug matters, the Ministry of Foreign Relations proceeded to remit the documentation sent by the US Embassy to the Attorney General in order to enable him to issue an opinion regarding whether the information complied with the formal requisites established by national law.

23. The Attorney General, the State noted, by means of a ruling dated June 21, 2004, decided that the documentation presented by the US complied with the legal requisites established in national law, for which purpose he sent the file to the Ministry of Foreign Relations, for it to take the respective decision.

24. By means of a power of attorney, the State noted, Mr. Zaldaña Ventura named Adalides Batista Vergara as his lawyer to represent him during the extradition proceedings, who, in turn, named Orlando Alonso Rodriguez as his substitute.

25. The Ministry of Foreign Relations, the State pointed out, by means of Ministerial Resolution No. 825 of July 7, 2004 resolved to "Grant" the request for extradition presented by the US Government against the Salvadoran citizen Antonio Zaldaña Ventura. This resolution was personally notified to the individual whose extradition was sought on July 8, 2004, and in the same a manuscript was incorporated which textually stated the following: "I want them to extradite me as soon as possible" ("*Yo quiero que me extraditen lo más pronto posible*") Signed, Antonio Zaldaña Ventura, 8-7-04=230 pm." At the same time he noted that he no longer required the services of a State appointed lawyer since he had a private lawyer, and in the file was a power of attorney granted to his lawyer Adalides Batista Vergara.

26. On July 12, 2004, the State noted, the Salvadoran citizen Antonio Zaldaña Ventura, presented a manuscript in which he textually manifested the following: "by this means I, Antonio Zaldaña Ventura, Salvadoran, with passport No. B646202, state that I freely accept the extradition requested by the United States which was granted by the Government of Panama by means of Resolution 825 of July 7, 2004, and which I attest to irrevocably." The State pointed out that he signed this document in the presence of Mrs. Marta Gonzalez and Mr. Luis A. Lopez A., also the action was witnessed by Mr. Otto A. Escartin Romero, the lawyer of the Ministry of Foreign Relations.

27. In the extradition file, the State added, there is a Note A.J. No. 2032 of August 2, 2004, in which this institution informed the Consul General of the Republic of El Salvador in Panama about the expression of voluntariness of Mr. Antonio Zaldaña Ventura who agreed to his extradition to the United States and at the same time, the response which the Embassy of the Republic of El Salvador offered to the Ministry of Foreign Relations by means of Note A.124.137 of August 3, 2004.

28. By means of Note N.V.A.J. No. 1861 of July 14, 2004, the Ministry of Foreign Relations, in compliance with the provisions of Article 2510 of the Judicial Code, placed Mr. Antonio Zaldaña Ventura at the disposition of the United States, so that within a period of 30 days he could be transferred to that jurisdiction, which in fact was carried out on August 18, 2004.

29. The State of Panama denied the alleged violations of human rights denounced by Mr. Zaldaña Ventura as regards having been placed in detention for more than 60 days in violation of the Bilateral Extradition Treaty, that he was obliged to accept his voluntary extraction to the United States, the lack of legal representation during the extradition process, the lack of communication with the Salvadoran Consulate regarding his legal situation while he was in detention and the alleged violation of the principle of "speciality" set forth in the Bilateral Extradition Treaty.

30. With regard to the allegation that Mr. Zaldaña Ventura was in detention for more than the 60 days stipulated in the Bilateral Extradition Treaty, the State's argument is summarized to the effect that it notes that he was arrested on April 15, 2004. The 60 day period, the State informs, permits the State requesting the extradition to formalize the reasons therefor. The US, the State explains, presented the grounds for the extradition on June 11, 2004; consequently, the 60 day limit was not surpassed. Once the extradition request has been formalized, Article 41(2) of the Law 23 of December 30, 1986, requires

that the Ministry of Foreign Relations, within five days, inform the Attorney General; according to the State, this was carried out on June 15, 2004. On June 21, 2004, the Attorney General, within the period established in Article 2498 of the Judicial Code and Article 42 of the UN Anti Drug Law, ruled that the documentation supported the request for extradition. Then, within the five day period established by article 41(4) of Law 23 of December 23, 1986, the Attorney General returned to the Ministry of Foreign Relations the documentation relating to the request for extradition.

31. Pursuant to the five day period stipulated in Article 41(5) of Law 23 of December 23, 1986, the Executive, by means of the Ministry of Foreign Relations, has a period of five days, from the date of the return of the documentation from the Attorney General's office, within which to accept or reject the request for extradition. On July 7, 2004, the Ministry of Foreign Relations granted the request for extradition presented by the US Government and the same was notified the same day.

32. On July 12, 2004, once Mr. Antonio Zaldaña Ventura presented his signed statement before the Ministry of Foreign Relations, by which he voluntarily declared his desire to be surrendered to the US authorities, the State noted that the Ministry of Foreign Relations, by means of a Note dated July 14, 2004, pursuant to Article 2510 of the Judicial Code, proceeded to place him at the disposition of the United States in order to carry out his transfer, which was achieved on August 18, 2004.

33. The State, in response to Mr. Zaldaña's denunciation regarding arbitrary detention notes that he was detained for 123 days in the following stages:

-Period of Preventive Detention- pursuant to Article III of the Bilateral Extradition Treaty; Article 2502 of the Judicial Code; this comprised 55 days from April 15 to June 11, 2004.

-Period of Decision- pursuant to Article 41(6) of Law 23 of December 30, 1986; this comprised 26 days from June 12 until July 7, 2004.

-Voluntary Declaration- pursuant to Article 2507 of Judicial Code; this comprised 5 days from July 7-12, 2004, date on which Mr. Antonio Zaldaña presented his written statement accepting the extradition.

Formal communication- pursuant to Article 2510 of the Judicial Code; this comprised 9 days from July 13-21, 2004, date on which the availability for extradition was formally communicated.

Execution of extradition period- pursuant to Article 2510 of the Judicial code; this comprised 29 days counted from July 21, the date on which the US Embassy was notified that the individual whose extradition was sought was at the disposition of the US Government, until his surrender on August 18, 2004, the date on which his extradition was carried out.

Consequently, the State concluded, it rejected completely the petitioner's argument that his extradition violated the legal provisions of the Anti Drug Convention and the Bilateral Extradition Treaty and the provisions of Law 23 of December 30, 1986 and the Judicial Code.

2. Mr. Zaldaña was not obliged to voluntarily accept his extradition

34. The State underlined the fact that Antonio Zaldaña Ventura was not obliged to accept his extradition. In addition, he refused a court appointed lawyer, indicating that he had named a private lawyer, Dr. Adalides Batista, to defend him. Subsequently, the State pointed out, Mr. Antonio Zaldaña Ventura, this time in the presence of two witnesses, Mrs. Marta E. González and Mr. Luis E. López, declared by means of a signed statement, his willingness to be extradited to the United States; all this in presence of Dr. Otto A. Escartín Romero, the lawyer of the Ministry of Foreign Relations.

3. Mr. Zaldaña was represented by a lawyer

35. In response to Mr. Zaldaña's charges that he was not appropriately represented during the extradition proceedings, the State points out that he was represented by the lawyers José Luis

Abrego of the law firm Ramón and Associates, Abner Alvarez Ruiz, Orlando Alonso Rodríguez and Adalides Batista Vergara.

36. In addition, when Mr. Zaldaña Ventura was notified of Resolution 825 of June 7, 2004, and was asked whether he wished to have a court appointed lawyer, he responded that he did not need a court appointed lawyer since he already had a private lawyer, at which time Adalides Batista appeared as his legal representative and Orlando Alonso Rodríguez as her substitute.

4. The Salvadoran Consulate was informed of the extradition of Mr. Antonio Zaldaña Ventura

37. The State points out that Note A.J. No. 2032 of August 2, 2004 in the Ministry of Foreign Relations file indicates that the legal situation of Mr. Antonio Zaldaña Ventura was communicated to the Consul General of the Republic of El Salvador, specifically, that Mr. Zaldaña had consented voluntarily to be extradited to the United States. This communication was replied to by the Embassy of the Republic of El Salvador by means of Note A.124.137 of August 3, 2004.

5. Alleged violation of the principle of *Speciality* in matters relating to Extradition

38. The State responded that in its view it was up to the US authorities to respond to the violations alleged regarding the principle of *speciality* raised by the petitioner.

6. The State requests the Commission to declare the petition inadmissible

39. The State requests the Commission to declare the petition inadmissible based on the following:

- The principle of due process has not been violated since the petitioner had ample opportunity and took extensive advantage of the distinct remedies available with respect to his detention and judicial guarantees;
- That the extradition was carried out pursuant to Panamanian law;
- That the extradition was based on a Ministerial Resolution and that when Mr. Zaladaña Ventura was notified of the decision he expressed his willingness to be transferred to the US authorities;
- That the proceedings by which Mr. Zaladana's extradition was requested by the US authorities complied with the legal requisites applicable to extradition under Panamanian law;
- That as the formal request for extradition by the US Government indicates, said Government accepts and commits itself to try and sentence him only for the facts that gave rise to the request for extradition;
- That the judgment by which the request for habeas corpus was presented confirmed the legality of the detention of the petitioner;
- That the petitioner had a legal representative for his defense as is evidenced by the powers of attorney granted to different private lawyers.

IV. ANALYSIS CONCERNING JURISDICTION AND ADMISSIBILITY

A. Jurisdiction

1. The Commission's jurisdiction *rationae personae*, *ratione loci*, *ratione temporis*, and *ratione materiae*

40. The petitioner is entitled, pursuant to Article 44 of the American Convention, to lodge a petition with the Commission. The petition names Antonio Zaladaña Ventura as the alleged victim, whose rights under the American Convention Panama has pledged to respect and guarantee. As for the State, the Commission points out that Panama signed the American Convention on November 22, 1969 and ratified it on June 22, 1978. Consequently, the Commission has jurisdiction *ratione personae* to examine the petition. In addition, Panama is a State party to the Vienna Convention on Consular Relations. As regards the petitioner's claim that he was misled into pleading guilty to charges of drug-trafficking in the United States by his court-appointed lawyer who told him that if he did not so plead that he would be sentenced to 30 years in prison, this claim is not admissible in this case against Panama, since it affects a respondent Government other than Panama.

41. The Commission has jurisdiction *ratione loci* because the alleged violations are said to have taken place within the territory of a State party to the American Convention.

42. With regard to the Commission's jurisdiction *ratione temporis* to examine the petition, the facts are said to have occurred during 2004, at which time the American Convention was in force in Panama.

43. Finally, the Commission is competent *ratione materiae*, because the petition denounces violations of human rights protected by the American Convention. In this case, as in several others before it, the issue is raised regarding the extent to which a State party has given effect to the requirements of Article 36 of the Vienna Convention on Consular Relations for the purpose of evaluating that State's compliance with a foreign national's due process rights under the applicable norms of the inter-American system, in the instant case, under Article 8 of the American Convention.¹ As regards possible violations of Articles 6 and 8 of the Bilateral Extradition Treaty between Panama and the United States, the Commission considers these claims to be inadmissible since this treaty does not fall under the Commission's jurisdiction.

2. Exhaustion of domestic remedies

44. Article 46(1)(a) of the American Convention states that admission by the Commission of a petition or communication lodged in accordance with Article 44 shall be subject to the requirement that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to allow national authorities to learn of the alleged violation of a protected right and, in appropriate cases, to resolve it before it is taken before an international instance.

45. The requirement of prior exhaustion of remedies is met when the national system is furnished with remedies that are adequate and effective to repair the alleged violation. In this connection, the exception to the requirement to exhaust domestic remedies, contained in Article 46(2) of the American Convention, does not apply when there is denial of justice, *viz.*, the domestic legislation of the State concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

46. Based on inferences from the principles of international law, as reflected in precedents established by the Commission and the Inter-American Court of Human Rights, it is especially important that the State against which a claim is being lodged should invoke the plea of non-exhaustion of domestic remedies in the early stages of the proceedings before the Commission². When a petitioner alleges that he or she is unable to exhaust domestic remedies, Article 31(3) of the Commission's Rule of Procedure establishes that the burden then shifts to the State to demonstrate which domestic remedies provide effective relief for the harm alleged.³ In the instant case, the State has not opposed Mr. Zaldaña Ventura's petition on the ground of non-exhaustion of domestic remedies. To the contrary, the State has argued that Mr. Zaldaña Ventura has received the guarantees of due process in the extradition proceedings against him and in the writ of habeas corpus that was examined and decided by the Panamanian Supreme Court, which declared the legality of his detention.

¹ See Report N° 52/02, Case 11.753 *Ramon Martinez Villareal* (United States), para. 77; Report N° 61/03, Petition 4446/02 (Admissibility), *Roberto Moreno Ramos* (United States), para. 42.

² I/A Court H.R., *The Mayagna (Sumo) Awas Tingni Community Case, Preliminary Objections*, Judgment of February 1, 2000, para. 53; *Castillo Petruzzi Case, Preliminary Objections*, Judgment of September 4, 1998, para. 56; *Loayza Tamayo Case, Preliminary Objections*, Judgment of January 31, 1996, para. 40. The Commission and the Court have found that the early stages of the proceedings should be defined as the stage for assessing the admissibility of the proceedings before the Commission —i.e., before any assessment of the merits. See, for example, I/A Comm. H.R., Report No. 71/05, P-543/04, (Admissibility), *Ever de [Jesús] Montero Mindiola*, Colombia, October 13, 2005, which cites, I/A Court H.R., *Caso Herrera Ulloa*, Judgment of July 2, 2004, para. 81.

³ *Ibid.*

47. The State informed that the writ of habeas corpus was resolved by the plenary of the Supreme Court on May 28, 2004, in a decision which declared the detention of Mr. Zaldaña Ventura to be legal. The Justices pointed out that "in conformity with the preceding paragraphs, the plenary of the Court is of the view that the detention of Mr. Antonio Zaldaña Ventura had not violated his right to due process, as his lawyer alleged. Given that Mr. Zaldaña Ventura presented his petition to the Commission on August 21, 2006, almost two years after the decision issued by the Panamanian Supreme Court, the Commission concludes that the alleged violation of Article 7 is inadmissible pursuant to Article 46(1)(b) of the American Convention.

48. With regard to the petitioner's central claim that while spending four months in detention in Panama that he was not informed of his right to seek consular assistance from the Government of El Salvador, the country of his nationality, (nor, he claims, was he permitted to contact the Salvadoran Consulate in Panama) in violation of Article 8 of the American Convention informed by Article 36 of the Vienna Convention on Consular Relations, the State does not address this claim in its response. The State reported that on August 2, 2004 the Panamanian Ministry of Foreign Relations informed the Consulate General of the Republic of El Salvador of the legal situation of Mr. Antonio Zaldaña Ventura, specifically, that he had consented, voluntarily, to his extradition to the United States. This is the only information in the State's response regarding Panama's contact with Mr. Zaldaña's country of nationality.

49. In light of the fact that Panama did not respond to the Commission's August 6, 2007 (*supra* para. 4) request for information regarding implementation of Article 36 of the Vienna Convention on Consular Relations, which requires the State to provide information to an alien detainee regarding the possibility of consular assistance, the Commission presumes that the Vienna Convention has not been implemented in Panamanian law, which could constitute a possible violation of Article 2 of the American Convention. In the absence of domestic legislation affording due process of law for the protection of the right that has allegedly been violated in this case, the petitioner is excused from exhausting domestic remedies, pursuant to Article 46(2)(a) of the American Convention.

3. Period for filing the petition

50. In accordance with the provisions of Article 46(1) (b) of the Convention, admission by the Commission of a complaint shall be subject to the following requirements—namely, that the petition or communication is lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment at the national level. The six-month rule guarantees legal certainty and stability once the decision has been adopted.

51. Under Article 32(2) of the Commission's Rules of Procedure, in those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. Under said Article, the Commission "shall consider the date on which the alleged violation of rights occurred and the circumstances of each case."

52. With regard to the petition to be examined, the Commission has established the applicability of the exception regarding lack of due process of law for the protection of the right or rights that have allegedly been violated referred to in Article 46(2)(a) and must therefore evaluate whether the petition was presented within a reasonable period in accordance with the specific circumstances of the case at hand.

53. In the present case the petition was lodged with the Commission on August 21, 2006. The fact situation presented reveals that Mr. Zaldaña has been uninterruptedly in detention since his arrest at the International Airport in Panama on April 15, 2004. He was transferred to the United States on August 18, 2004, where he was subjected to proceedings leading to his prison sentence. In determining whether the petition was submitted within a "reasonable" time, the Commission must consider the circumstances of the specific case.⁴

⁴ See Report N°54/04, P-559/02, (Admissibility) *Nelson Carvajal Carvajal*, (Colombia), October 13, 2004, paras. 34-8.

54. The Commission takes into consideration Mr. Zaldaña's legal situation that involved two countries and has been going on since April 2004, for over three years. Mr. Zaldaña was in uninterrupted detention in Panama and the United States, he claims inadequate and improper legal representation, and he suffers from the limitations imposed by an eighth grade education. Mr. Zaldaña was arrested upon his arrival in Panama on April 15, 2004, was held for four months and was extradited to the United States on August 18, 2004. Once in the United States, on February 18, 2005, Mr. Zaldaña changed his plea of Not Guilty to a Guilty plea to the charge of conspiracy to import cocaine into the US. As a consequence, on June 22, 2005, he was sentenced to 135 months imprisonment by the US District Court for the Southern District of New York. Despite the guilty plea, on June 27, 2005, Mr. Zaldaña appealed his judgment to the US Court of Appeals. That appeal is still pending.

55. The claim that the petitioner is making, *viz.* that his right to due process was violated in that Panama failed to notify him, at the time of his arrest or at least before he made his first statement before the authorities, of his right to consular assistance, once he was detained in Panama, is a claim that requires prior knowledge of the existence of the right. What distinguishes this right from other human rights is that knowledge of the existence of the right is dependent upon the notification requirement imposed upon the State and which the State, in this case, failed to afford the detainee. Accordingly, under these circumstances, the Commission considers that the petition was filed within a reasonable time and finds that the petition is not barred from consideration under Article 46(1)(b) of the American Convention.

4. Duplication of procedures and international *res judicata*

56. There is no suggestion in the case file that the subject of the petition or communication is pending in another international proceeding for settlement, nor that the petition or communication is substantially the same as one previously studied by the Commission or by another international organization. Accordingly, the requirements established in Articles 46(1)(c) and 47(d) of the American Convention shall be deemed to have been met.

5. Characterization of the facts alleged

57. For purposes of admissibility, the Commission shall decide whether the petition or communication states facts that tend to establish a violation of the rights guaranteed by this Convention, as stated in Article 47(b) of the American Convention, if the statements of the petitioner or of the State indicate that the petition or communication is manifestly groundless or obviously out of order, according to paragraph (c) of the same Article.

58. The standard for assessing these criteria is different from the standard required for deciding on the merits of a complaint. The Commission must carry out a "prima facie" assessment so as to examine whether the complaint establishes the apparent or potential violation of a right that is guaranteed under the American Convention and not so as to establish the existence of a violation. Such an examination is a summary analysis that does not imply any prejudice or preliminary opinion on the merits.⁵

59. The Commission does not find that the petition is "manifestly groundless" or that it is "obviously out of order". As a result, the Commission considers that, *prima facie*, the petitioner has met the criteria set forth in Article 47(b) and (c) of the American Convention.

60. In addition, the central claim of the petitioner is that his right to due process, as set forth under Article 8 read in conjunction with Article 1(1) of the American Convention and Article 36 of the Vienna Convention on Consular Relations, was allegedly violated by Panama given Panama's failure to inform him of his right to consular assistance "without delay" following his detention. The Inter-American

⁵ IACHR, Admissibility Report N° 21/04, Petition 12.190, *José Luís Tapia González y otros*, (Chile), February 24, 2004, para. 33.

Court's Advisory Opinion No. 16 stated that the Vienna Convention on Consular Relations confers rights upon detained foreign nationals; among them the right to information on consular assistance. The legal question posed by this case is whether the duty to inform the detainee of his right to consular assistance attaches in the first country in which the alien finds himself in a case where his extradition and prosecution is sought by a second country, or whether it only attaches in the second country, as a right of the defense in criminal proceedings, in a case where he is subject to criminal prosecution.

61. In light of the foregoing, the Commission is of the view that the petition raises important questions regarding possible violations of Article 8 of the American Convention, as informed by the Vienna Convention on Consular Relations and concludes that the petition is not inadmissible under Article 47(c) of the American Convention as "manifestly groundless" or "obviously out of order."

V. CONCLUSIONS

62. Based on the considerations of fact and law set forth herein, and without prejudging the substantive merits of the question, the Commission finds that the present case meets the requirements for admission as set forth in Article 46 of the American Convention.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the petition admissible under Articles 1(1), 2 and 8 of the American Convention.
2. To declare the alleged violation of Article 7 of the American Convention and the other allegations presented under the Bilateral Extradition Treaty between Panama and the United States inadmissible.
3. To notify the State and the petitioner of this decision.
4. To initiate proceedings into the merits of the case.
5. To publish this decision and include it in its Annual Report, to be presented to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 15th day of the month of October, 2007.
Signed: Florentín Meléndez, President; Paolo G. Carozza, First Vice-President; Víctor E. Abramovich, Second Vice-President; Evelio Fernández Arévalos, Sir Clare K. Roberts, and Freddy Gutiérrez, Commissioners.