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Title/Style of Cause:	Severiano, Hermelindo and Sebastian Santiz Gomez v. Mexico
Doc. Type:	Decision
Decided by:	Chairman: Professor Claudio Grossman; First Vice Chairman: Ambassador John S. Donaldson; Second Vice Chairman: Professor Carlos Ayala Corao; Members: Dr. Oscar Lujan Fappiano, Professor Robert Kogod Goldman, Dr. Jean Joseph Exume, Ambassador Alvaro Tirado Mejia.
Dated:	29 April 1996
Citation:	Santiz Gomez v. Mexico, Case 11.411, Inter-Am. C.H.R., Report No. 25/96, OEA/Ser.L/V/II.95, doc. 7 rev. (1996)
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This Commission report concerns the admissibility of the present case, considering that the Government has on repeated occasions expressed that the case should be declared inadmissible insofar as the petitioners have not exhausted all of the means of recourse available within the Mexican judicial system.

I. BACKGROUND

1. According to the information provided by petitioners to the Inter-American Commission on Human Rights (hereinafter the Commission), on January 7, 1994, agents of the Mexican Army violently entered the indigenous community of Morelia, Altamirano municipality, Chiapas. Said agents violently entered houses, removing the men with blows and kicks, gathered them together in the church and the basketball court of the ejido, and forced them to throw themselves on the ground with their faces against the concrete. While they were held in these conditions, the soldiers looted the houses and stores of the village and destroyed the medical clinic. Three of the inhabitants, Severiano, Hermelindo, and Sebastián Santiz Gómez, were removed from the group based on a list an Army captain had and taken to the church vestry, where they were tortured; later they were placed in a military vehicle. On February 11, 1994, the remains of the three indigenous men were found on the road that runs between Altamirano and Morelia.

II. PROCESSING BEFORE THE COMMISSION

2. On November 23, 1994, the Commission received a petition denouncing the responsibility of the Mexican State for the alleged violation of Articles 4, 5, 7, 8, 25, and 1(1) of the American Convention on Human Rights (hereinafter the American Convention).

3. The Commission forwarded the pertinent parts of the complaint to the Government of Mexico on December 12, 1994, and requested that it provide information about the allegations, and in respect of any other criteria that would allow it to determine whether domestic remedies were exhausted in this case; it gave the Government 90 days to respond.

4. On February 1, 1995, the Commission received additional information from petitioners and forwarded it to the Government of Mexico on February 8, 1995.

5. On March 9, 1995, the Government requested a 30-day extension to collect the documentation so as to provide an adequate response; the Commission granted this request on March 13, 1995.

6. On April 10, 1995, the Government requested a second 30-day extension to collect the documentation so as to provide an adequate response; the Commission granted this request on April 17, 1995.

7. On May 15, 1995, the Government requested a third 30-day extension to collect the documentation so as to provide an adequate response; the Commission granted the request on May 17, 1995.

8. By note received on June 19, 1995, the Government submitted its response in relation to the case under consideration.

9. The petitioners submitted their observations to the Government's response on September 13, 1995, and the Government of Mexico submitted its final observations on November 22, 1995.

10. On April 23, 1996, the Government presented additional information as to the right to resort to fall back on resolutions or omissions of the Attorney General's Office, based on Article 21 of the Federal Constitution.

III. POSITION OF THE PARTIES ON ADMISSIBILITY

A. Position of the petitioners

11. Petitioners have argued that in the investigation of the facts alleged, those responsible for the investigation have displayed a complete lack of will, there has been no significant advance since the events in question. That upon the discovery of the bodies, the Attorney General for the State of Chiapas began preliminary inquiry No. AL/014/994, which has remained open without any progress in the investigation. That in September 1994, the Assistant Attorney General for the State said that the investigation could not be continued since it was not feasible to reach the location of the events, given that the Army would not allow entry as the area in question was a conflict zone. That parallel to the preliminary inquiry of the Office of the Attorney General of the State of Chiapas, preliminary inquiry No. 332M/04/94 was begun before the Military Public Ministry, though it is not known who is in charge of the inquiry. That pursuant to the criterion

upheld by the Supreme Court of Justice, there is no remedy for acts or inertia by the Public Ministry, and consequently the victims lack an effective and simple remedy that might cause the investigations to be continued.

12. Petitioners also stated that the Government's position has been to deny any responsibility for the events giving rise to this complaint. That the Secretariat for National Defense (SEDENA), in its communique No. 30 of February 14, 1994, maintained in reference to this case that:

Military authorities answered the demands for information from political organizations, and human rights groups interested in the case; they sufficiently established that the three individuals, who remain disappeared to this day, were never detained by military personnel, since on January 7 there was no military presence in the ejido.

13. In their observations of September 13, 1995, the petitioners reiterated that there is a delay in the investigation of the case, as well as a series of serious anomalies in the process, and also governmental declarations contradicting the facts, which together establish the Government's lack of will to clarify the facts. That the remedies to be exhausted should be only those appropriate for resolving the events giving rise to the complaint and not each and every entity to which they might have recourse. That the appropriate remedy was the preliminary inquiry, which in the 18 months since the events denounced in this case, has yet to produce any concrete result.

14. Likewise, the petitioners indicated that Article 21 of the Mexican Constitution, while providing for challenges to resolutions of the Public Ministry in which it refrains from acting, is currently pending regulation, and so has no practical application.

15. In addition, the petitioners stated that another circumstance that exempts them from the prior exhaustion of domestic remedies is the negligence and contradictions in the study of the remains of the three men shown by the Mexican authorities. That in the morning of February 11, 1994, a group of members of non-governmental human rights organizations traveled to Morelia, where they found dispersed bones and fragments of clothing. That among the skeletal remains there were partial and complete mandibles, one of which had extensive silver dental work which Sebastián's son Humberto identified as his father's. That the identification and study of these remains was not carried out by specialized personnel, and that upon completion of this work, they left behind a human rib and pieces of scalp on the ground. In addition, they placed the remains in bags indiscriminately, mixing them up with no logic.

B. The Government's Position

16. The Government has said that not only have the petitioners failed to comply with the requirement of exhausting domestic remedies, but that they have not even made use of them, for had any irregularities arisen in seeking justice attributable to the Agent of the Public Ministry, whether a federal or local public servant, the petitioners could recur to either the Contraloría General of the State of Chiapas or to the Secretariat for National Defense, to denounce the respective Agent of the Public Ministry, and to lodge the respective complaints with the Federal Public Ministry.

17. Similarly, it has stated that the Mexican Constitution was reformed on December 31, 1994. That among the reforms most relevant to improving of the administration of justice, was one regarding the possibility of challenging--through judicial channels, in the terms established by law--the Public Ministry rulings on the failure to prosecute and on dismissal of criminal proceedings. That to date Article 21 has yet to be regulated, and that lacking such regulations, the indirect amparo serves as a means of defense.

18. Likewise, it has indicated that regarding the delay in the investigation, both the Attorney General of Chiapas and the Office of the Attorney General for Military Justice, not only did not delay the respective investigation, but that once aware of the complaint, they diligently investigated and initiated, in their corresponding jurisdictions, the appropriate preliminary inquiries. That in this sense, the Office of the Attorney General for Military Justice resumed the work of organizing and consummating the respective investigation.

19. The Government has added that the experts who examined the remains were highly qualified professionals who produced an expert opinion in forensic pathology and dentistry, forensic medicine, and field criminology, pursuant to their appointment as experts by the Attorney General for Military Justice to give an opinion in preliminary inquiry No. 33Z.M./04/94-E.

20. In its final observations of November 22, 1995, the Government reiterated its initial statement regarding the failure to exhaust domestic remedies or to establish exceptions to this requirement. The Government notes that because the petitioners did not invoke the first exception to prior exhaustion, stipulated in Article 37(2) of the Regulations of the IACtHR, they recognize that under the domestic law of Mexico, legal remedies and procedures do exist to protect the rights allegedly violated. That it is evident that, given that legal and procedural remedies do exist, the petitioners could recur to them, and if they did not it was the result of their own decision, either out of negligence or ignorance, given that their access to said remedies was never impeded.

21. Similarly, the Government stated that the exception contained in Article 37(2)(c) of the Regulations does not apply, given that there was no unjustifiable delay in the investigation of the events by the Public Ministry attributable to that institution; the pace of the proceedings has corresponded to the need for an exhaustive and meticulous investigation, due precisely to the seriousness of the situation, and the only delays were caused by individuals who, having been summoned in a timely and appropriate manner, did not come before said institution to provide the information and knowledge that they possessed and help shed light on the events in a more effective and prompt manner. That the Military Public Ministry has carried out its function of investigating the case, but unfortunately it has not received the cooperation it needs to clarify the events.

22. Likewise, the Government argued that as the petitioners indicate, the Public Ministry is the most appropriate body for hearing human rights violations; however, they did not recur to it to present a formal denunciation or complaint so that the corresponding criminal case could be brought. That in view of the fact that no formal indictment was handed down, the military authorities assumed the investigation as a duty of their own, based on statements made by Mr.

Martín Faz Mora at a press conference. That later in declarations made by Mr. Faz Mora to the competent authorities, he acknowledged that he only knew of the events from statements made by neighbors from the area, a circumstance which undercuts the evidentiary value of his statement.

23. Similarly the Government stated that after the inquiries had been carried out and the necessary documentation obtained, the Agent of the Military Public Ministry who heard the matter requested that the case be closed without prejudice, given the failure to show any military responsibility, that the assistants of the Office of Attorney General for Military Justice did not find this situation proper, and decided to refer the case to the preliminary investigations division of the Office of the Attorney General for Military Justice, for the prosecution, consummation and ruling on the case at the appropriate point in the procedure, and it remained registered under No. SC/60/94/V. That for these reasons, the investigation was suspended, from April 15, 1994 until May 26, 1995, when the National Human Rights Commission provided new information. That on November 9, 1995, as there was no evidence demonstrating the existence of elements of any military offense, nor the probable responsibility of military personnel in the commission of any offense, the Ministerial Agent of the military jurisdiction determined that the events that gave rise to the investigation did not constitute an offense, and consequently decreed the case closed without prejudice.

IV. GENERAL CONSIDERATIONS

A. Considerations regarding the competence of the Commission

24. The Commission is competent to hear this case because it addresses violations of rights recognized in the American Convention: Article 1(1), on the obligation to respect the rights; Article 4, right to life; Article 5, right to humane treatment; Article 7, right to personal liberty; Article 8, right to a fair trial; and Article 25, right to judicial protection, as established in Article 44 of said Convention, to which Mexico has been a party since April 3, 1982.

B. Considerations regarding the formal requirements for admissibility

25. This petition meets the formal requirements of admissibility set forth in Article 46(1) of the American Convention and Articles 32, 37, 38, and 39 of the Regulations of the Commission. In effect, the petition contains the information on the petitioners, the description of the events alleged to violate the human rights protected by the American Convention, and identification of the government considered responsible for the alleged violation. Likewise, the complaint was presented within the time period established for submission, is not pending in any other international proceeding for settlement, nor is it the reproduction of a petition already examined by the Commission.

26. Regarding the requirement of previous exhaustion of domestic remedies, pursuant to Article 46(1)(a) of the American Convention, so that a petition or communication submitted to the Commission is considered admissible pursuant to Articles 44 or 45, it is required "that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law."

27. Paragraph 2 of this Article establishes that the provisions regarding the exhaustion of domestic remedies are not applicable when:

- a. 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;
- b. 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
- c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

28. The petitioners have stated that the Office of the Attorney General for the State of Chiapas opened preliminary inquiry No. AL/014/994, which remains open. Likewise, that the Military Public Ministry began preliminary inquiry No. 332M/04/94. That 18 months have passed since the events occurred and the necessary investigations have not been carried out.

29. The Government has noted that the delay in the investigations was due to the need for an exhaustive and meticulous investigation. It also indicated that the only delays that occurred were caused by individuals who, having been summoned in a timely and appropriate manner, did not come before said institution to provide the information and knowledge at their disposal so as to help clarify the facts more effectively and promptly.

30. The right to a trial "within a reasonable period of time" provided for under the Inter-American Convention is grounded, *inter alia*, in the need to avoid undue delays constituting a denial of justice, prejudicial to persons invoking the violation of rights protected by the aforementioned Convention.[FN1]

[FN1] Claim brought before the Inter-American Court on Human Rights, Case 11.219 (Nicholas Chapman Blake), August 3, 1995, p.32.

31. In consideration of the foregoing, the Court has said that "the rule of prior exhaustion must never lead to a halt or delay that would render international action...ineffective." [FN2] The mere fact that the pursuit of domestic remedies continues does not mean that the Commission is not authorized to analyze the case, for this would allow the State to conduct investigations and domestic judicial processes, prolonging them unreasonably without the inter-American system being able to intervene.

[FN2] I/A Court of H. R., Velásquez Rodríguez Case, Preliminary Objections, Judgment of July 26, 1987. Series C No. 1, paragraph 93.

32. From the record it appears that more than two years have passed since the events, without the respective criminal proceedings having been brought to date, nor is there any well-founded

indication that it will be brought, as the investigations are notably delayed, suggesting that they will not produce any positive result. This is confirmed as well by the Government statement to the Commission that on "November 9, 1995, the Ministerial Agent for military jurisdiction determined that the events that gave rise to the investigation did not constitute offenses; consequently, it is decreed that the case be closed without prejudice."

33. The Government of Mexico has also stated that several remedies exist which the petitioners could have availed themselves of prior to coming before an international body, such as the Contraloría General of the State of Chiapas, the Secretariat for National Defense, and the Federal Public Ministry. That likewise, the December 1994 reform of the Constitution provides at Article 21 the possibility of challenging the resolutions of the Public Ministry in those cases; however, they add that despite that this article is pending regulation, the same has been interpreted by the Federal Courts in two ways: first, that claims contesting resolutions by the public ministry "would be subject to a secondary law to be created in the future"; and second "that such a law already exists and is in fact the Law on Jurisdiction, which establishes the means of contesting such resolutions".

34. The Inter-American Court has noted that "Article 46(1) of the Convention speaks of generally recognized human principles of international law. Those principles refer not only to the formal existence of such remedies, but also to their adequacy and effectiveness, as shown by the exceptions set out in Article 46(2)."^[FN3]

[FN3] I/A Court of H. R., Velásquez Rodríguez Case, Judgment of July 29, 1988, page 16, paragraph 63.

35. That they be adequate means that the operation of these remedies, in the domestic legal system, should be such as to provide protection vis-à-vis the infringed legal right.^[FN4]

[FN4] I/A Court of H. R., Velásquez Rodríguez Case, Judgment of July 29, 1988, page 16, paragraph 64.

36. That they be effective means capable of producing the outcome for which they were intended.^[FN5]

[FN5] I/A Court of H. R., Velásquez Rodríguez Case, Judgment of July 29, 1988, page 16, paragraph 66.

37. Applying these principles to this case, the Commission observes that "a number of remedies exist in the legal system of every country, but not all are applicable in every circumstance."^[FN6] In this case, the Commission considers that while domestic remedies exist

in Mexico that have not been exercised, the Government has not demonstrated that they are adequate or effective for addressing the alleged violations, capable of ensuring that the necessary investigations of the events denounced and now before us be swiftly carried out.

[FN6] I/A Court of H. R., Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 64.

38. The argument by the Mexican Government in favor of applying Article 21 of the Federal Constitution of Mexico also fails, insofar as the available means of recourse must be simple, swift and effective in accordance with Article 25 of the American Convention, since, even though an interpretation has been allowed in some cases permitting the exercise of indirect jurisdiction, this interpretation has not met with widespread acquiescence in the Mexican courts: indeed, as the Government of Mexico has indicated, there is another opposite interpretation on this matter, under which the means of recourse referred to in Article 21 of the Constitution is to be the object of legal regulation.

39. The Commission, based on the arguments presented above, concludes that the exemptions from requirements that domestic means of recourse be exhausted, as provided for in Articles 46.2 (b) and (c) of the American Convention, are applicable in this case, and thus exempt the petitioners from fulfillment of this condition for admissibility.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

CONCLUDES:

40. To declare admissible the complaint presented in case 11.411, pursuant to Articles 46, 47, and 48 of the American Convention.

41. To send this report to the Government of Mexico and the petitioners.

42. To summon the parties to a hearing to be held by the Commission during its 93rd Regular Session.

43. To continue to consider the substantive issues on the merits raised in the present case.

44. To publish this report in the Annual Report to the General Assembly of the OAS.