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Title/Style of Cause:	Evaristo Dorado Almanza, Blas Dorado Almanza, Conrado Dorado Almanza and Santos Salvador Hernandez, Ines Dorado Almanza, Pablo Dorado Almanza, Rogelio Salvador Gonzalez and Celso Salvador Hernandez 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:	16 October 1996
Citation:	Dorado Almanza v. Mexico, Case 11.479, Inter-Am. C.H.R., Report No. 44/96, OEA/Ser.L/V/II.95, doc. 7 rev. (1996)
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In this report, the Commission will consider the admissibility of the present case, in view of the fact that the Government has repeatedly stated that the case should be declared inadmissible, since it considers that the petitioners have not yet exhausted the remedies contemplated in Mexico's domestic jurisdiction.

I. BACKGROUND

1. According to the information furnished by the petitioners, Evaristo Dorado Almanza and Blas Dorado Almanza were detained--arbitrarily, and in the absence of an order for their arrest--by members of the State Judicial Police on March 28, 1993 in the Quelavidad Calazabal neighborhood of Tanlajas Municipality in the State of San Luis Potosí, on grounds of their presumed part in the murder of police officer Mario Maldonado Luna. The next day, Conrado Dorado Almanza and Santos Salvador Hernández were also arrested on suspicion of having taken part in the same crime. Also, another four persons--whose names are Inés Dorado Almanza, Pablo Dorado Almanza, Rogelio Salvador González and Celso Salvador Hernández--were arbitrarily held and beaten by the Judicial Police; but they were subsequently released.

2. It is alleged that following the arrest, the first four persons named above were moved to the offices of the State Judicial Police in Ciudad Valles, where they were tortured to make them confess that they had committed the crime as charged. Later on, they were turned over to a judge who hears both criminal and civil matters in the lower court, and who in this instance issued the order for their imprisonment on the charge of homicide. After a year they were released, due to

the lack of sufficient evidence to find them guilty. The Attorney General's Office appealed the verdict acquitting them. This resulted in a sentence of nine years in prison for the four persons named. An application for a writ of amparo was presented in regard to that sentence, but was denied.

II. PROCEEDINGS BEFORE THE COMMISSION

3. On March 31, 1995 the Commission received a claim accusing the Mexican Government of responsibility for a presumed violation of the human rights set forth in Articles 5, 7, 8, 25 and 1.1 of the American Convention on Human Rights (hereinafter "the American Convention").

4. On May 8, 1995, the Commission complied with Article 34 of its Regulations by transmitting the pertinent portions of the claim to the Government of Mexico. The communication also asked that Government for information concerning the events in the claim and in regard to any other facts that could help the Commission to determine whether all the remedies of internal jurisdiction had been exhausted. The Government of Mexico was given a period of 90 days to provide this information.

5. On August 4, 1995, the Government requested an extension of 30 days to assemble the documentation needed to provide a satisfactory response. The extension was granted by the Commission on October 10, 1995.

6. On November 14, 1995, the Government presented its reply concerning the case of reference.

7. On December 29, 1995, the Commission sent the Government a copy of the claimant's remarks in regard to the information furnished by the Government on November 14, 1995.

8. On January 26, 1996, the Government asked for a 30-day extension to gather the information and provide a satisfactory response. The Commission granted that request on January 29, 1996.

9. On March 1, 1996, the Mexican Government presented its final observations concerning the comments made by the claimants.

10. On July 8, 1996, the claimants presented additional information with respect to the medical certificates attesting to the torture to which Evaristo, Blas and Conrado Dorado Almanza and Santos Salvador Hernández had been subjected.

11. On July 9, 1996, the Commission sent the Government of Mexico the pertinent portions of the additional information presented by the claimant regarding the case being processed.

III. POSITION OF THE PARTIES IN REGARD TO ADMISSIBILITY

A. Position of the Petitioners

12. The claimants have stated that there had been an unwarranted delay in the proceedings, since the charges presented to the Attorney General's Office by the residents of Quelavidad Calabazal and the claimants' lawyers had produced no results up to that time.

13. The petitioners also stated that on June 25, 1993, they had asked the Attorney General's Office for information as to the status of the investigation. The reply from that Office, however, had not only failed to include any of the information about the charge of torture, but also limited its remarks to the statement that the persons held in custody had denied that they had been beaten, thereby refuting the statement given by those same persons when they appeared before the judge of the lower court, as well as the medical certificates attesting to the torture.

14. The claimants also reported that they had recently gone to the Attorney General's Office to ask for information on the progress of the investigation, at which time they were told that the file had been lost. They went on to say that the period of two years during which no investigation had taken place assuredly constituted an unjustified delay.

15. In addition, that if the Attorney General's Office deemed itself incompetent to take cognizance of a case of torture on grounds that this was the purview of the federal authorities, it should issue a resolution to that effect, a step that had not been taken to date. And that if the competent authority to handle the claim in question were not the Attorney General's Office for the State of San Luis Potosí, its failure to declare itself incompetent would constitute a further instance of unwarranted delay in the administration of justice, as well as negligence on the part of the authorities--which would in turn result in the international responsibility of the State of Mexico.

16. The claimants also point out that in this case, the correct remedy for an accusation of torture would be to report that offense to the Attorney General's Office of the State of San Luis Potosí. And that the torture had been committed by employees of San Luis Potosí, not by federal agents. Accordingly, it were the local courts and organs that were competent to handle the case.

17. With reference to the proceeding in which the villagers were convicted of homicide, the petitioners indicated that they had presented an appeal to the First Chamber of the Supreme Court of Justice concerning the order of formal imprisonment issued by the judge of the lower court, in which the question asked was: whether the confession of the persons accused was obtained by means of torture. That the appeal had been denied, and the verdict of the lower court confirmed. They noted that on January 21, 1994, an order had been issued for the release of the accused, since there was not sufficient evidence to show that they were guilty. That the Attorney General's Office had appealed that sentence, and on June 23, 1994, the First Chamber of the Supreme Court of Justice had revoked the absolving sentence and in its place had handed down a verdict declaring Santos Salvador Hernández and Blas and Evaristo Dorado Almanza guilty, and sentencing each of them to nine years in prison. That on August 4, 1994, the remedy of amparo was invoked against the verdict of the Ninth Circuit Collegial Court, but was rejected in November of that same year. The petitioners added that this outcome marked the exhaustion of all remedies in the attempt to secure the release of the persons held in custody until they have served out the sentence pronounced.

B. The Government's Position

18. Contrary to the statement given by the petitioners, the Government has indicated that the Federal Judiciary is the proper agency to determine a definitive settlement of this dispute from the standpoint of domestic law since, according to the letter of the law, that branch is responsible--in the final instance and as its obligation--for interpreting the Constitution, regulations, federal and local laws and international treaties signed by the Republic.

19. Moreover, the Government states, if the claimants failed to turn to the federal courts to settle this matter as provided by Article 104.1 of the Constitution and pertinent sections of the Organic Law of the Federal Judicial Branch, no unjustified delay, denial of justice or inefficacy of that Federation's courts could be said to exist. For this reason, the claimants have failed to comply with the requirement that all of the remedies of internal jurisdiction be exhausted, inasmuch as their recourse had been limited to the local courts--which were not competent to handle this type of situation.

20. It goes on to quote the following text of Article 140.I:

It is the duty of the Federation's courts to take cognizance of:

I. All disputes of a civil or criminal nature which may arise as to compliance with and the application of federal laws or international treaties to which Mexico is a party. When such controversies affect private interests only, the cases may also be heard, at the option of the plaintiff, by the common courts and judges of the States and the Federal District. An appeal of the sentences of the lower court may be lodged with the immediate superior of the judge who has heard the case at the lower level.

21. Furthermore, since the interpretation and application of Articles 5, 7, 8 and 25 of the American Convention in Mexico are a matter of public policy--because they involve disputes whose scope exceeds that of private interests--the cases cannot be heard by local judicial institutions. For this reason, the claimants should not have gone to other courts to resolve the matter, since the proper entities for addressing this type of situation are the federal courts.

22. As to the Government's supposed disinclination to settle this dispute, it states that it has presented requests to the Executive Branch and to the San Luis Potosí State Commission on Human Rights, asking that they handle the case and speed up the investigation process in order to obtain results at the earliest possible time.

IV. GENERAL CONSIDERATIONS

23. The Commission is competent to hear this case since it involves allegations concerning the rights recognized in the American Convention: Article 1.1, relative to the obligation to respect human rights and ensure the exercise thereof; Article 5, the right to physical integrity; Article 7, the right to personal liberty; Article 8, the right to a fair trial; and Article 25, the right to judicial protection as provided in Article 44 of that Convention, to which Mexico has been a party since April 3, 1982.

A. Considerations as to formal admissibility requirements

24. The present petition meets the formal requirements for admissibility contained in Articles 32, 37, 38 and 39 of the Regulations of the Inter-American Commission on Human Rights. It contains all of the data on the claimants; an account of the acts denounced and presumed to violate human rights; a stipulation of the State and the public authorities thereof which are involved; and information as to whether the remedies under domestic law have been exhausted. It also includes a statement that the subject of the petition is not pending settlement in any other international procedure, and that it does not duplicate any petition previously examined by the Commission.

25. According to Article 46.1 of the American Convention , in order for a petition to be considered admissible by the Commission, an indispensable requirement is that "the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law."

26. Paragraph 2 of the same article provides that the provisions in regard to the exhaustion of the remedies under domestic law shall not be 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 violations of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them.
- c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

27. The Inter-American Court of Human Rights has stated that:

The rule of prior exhaustion of internal remedies allows the State to resolve the problem under its internal law before being confronted with an international proceeding. This is particularly true in the international jurisdiction of human rights, because the latter "reinforces or complements the domestic jurisdiction" (American Convention, Preamble).[FN1]

[FN1] Inter-American Court of Human Rights. Velásquez Rodríguez Case. Judgment of July 29, 1988, paragraph 61, page 113.

28. The petitioners have stated that the Attorney General's Office for the State of San Luis Potosí instituted Prior Investigation 19/93 as reported in official order 05374, and that the investigation is still open; that more than two years have elapsed since the events took place, and there has been no appreciable progress in the investigation.

29. As to the proceeding in which the villagers were convicted of the crime of homicide, the petitioners also pointed out that all of the internal remedies which might exist have now been

exhausted, since the request for amparo lodged against the sentence handed down on June 23, 1994, by the First Chamber of the Supreme Court of Justice--which revoked the absolatory sentence issued by the First Lower Court--had been the last of those remedies. And that the Ninth Circuit Collegial Court had ruled against the amparo in November of that same year.

30. In the Government's view, the remedies of domestic law have not been exhausted, for it considers the proper entity for settling the case to be the Federal Judicial Branch, inasmuch as that is the competent body to resolve legal disputes of a federal nature and those arising from international treaties.

31. The right to a hearing "within a reasonable time" as set forth in the American Convention is based, among other reasons, on the need to avoid undue delays which might lead to the privation and denial of justice to the detriment of persons who invoke a violation of the rights protected by that Convention. [FN2]

[FN2] Petition presented to the Inter-American Court of Human Rights, Case 11.219 (Nicholas Chapman Blake), August 3, 1995, page 32.

32. Records of the case show that more than three years have elapsed since the events took place, and the Attorney General's Office has still not carried out the necessary investigation to find the persons presumed responsible for the alleged tortures of which Evaristo, Blas and Conrado Dorado Almanza and Santos Salvador Hernández were the presumed victims. The Inter-American Court of Human Rights has already stated that: "The duty to investigate, like the duty to prevent, is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, it must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government." [FN3]

[FN3] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 177, page 156.

33. In that context, the Commission finds that three years exceed the reasonable time set by the Convention in its Article 8, thus making it evident that the investigation has not been conducted in accordance with the terms established by the Court.

34. Furthermore, the Court has stipulated that the domestic remedies must be adequate and effective.

35. Adequate domestic remedies are those which are suitable to address an infringement of a legal right. [FN4]

[FN4] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 64, page 114.

36. A remedy must also be effective--that is, capable of producing the result for which it was designed.[FN5]

[FN5] Inter-American Court of Human Rights, Velásquez Rodríguez case, Judgment of July 29, 1988, paragraph 66, page 115.

37. The Commission considers that in the present case, no adequate and effective remedies exist that can be exhausted, since no simple and swift remedy is available in Mexico at present which can be used in the event of a decision against exercising penal action in an attempt to restore the legal situation that has been infringed. Despite the provision in Article 21 of the Mexican Constitution--which provides that the decisions of the Attorney General's Office to fail to exercise and/or to refrain from penal action may be impugned through jurisdictional channels in the terms established by law--no regulatory instructions have as yet been issued for that article. The result has been an avalanche of jurisprudential interpretations, and they have undoubtedly had an adverse impact on the juridical security to which Mexicans are entitled.

38. The Commission has also stated in this regard that:

In the cases in which the Attorney General's Office abstains from imposing penal sanctions, the IACHR has been able to identify a situation of juridical uncertainty with respect to the use of Article 21 of the Constitution in order to exercise a jurisdictional remedy which would allow such inaction to be monitored. In order to establish effective responsibilities, clarity regarding the scope of Article 21 of the Constitution and the possibility of its effective application in practice is essential.[FN6]

[FN6] Communiqué issued by the IACHR on July 24, 1996 at the end of its in situ visit to Mexico,

39. With further reference to the argument that the suitable remedy in this case would be to have recourse to federal justice, the Commission finds the fact that the Attorney General's Office has been unable--over a period of three years--to issue an opinion as to its competence, sufficient grounds for presuming that there has been a tacit recognition thereof. Moreover, the time that has elapsed has rendered this possible remedy ineffectual, for if it were to be exercised, that act alone would result in an even more marked delay in the proceeding.

40. As to the internal remedies which might still be available in the proceeding whereby the villagers were convicted of homicide, the Commission observes that it has been adequately proven in the records of the case that no other recourse exists at the domestic level that would be capable of overturning the sentence condemning Messrs. Santos Hernández, and Blas and Evaristo Dorado Almanza, inasmuch as the federal authority which might be available for such recourse would not be able to issue an opinion relative to the merit of the supposed confessions given under torture until the competent organ decides whether such torture really took place.

41. For the reasons stated in the preceding paragraphs, the Commission concludes that the exceptions to exhaustion of domestic remedies noted in Articles 46.2.b and 46.2.c of the Convention are applicable in this case, and it therefore exempts the petitioners from complying with that requirement for admissibility.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

CONCLUDES:

42. To declare admissible the petition presented in case 11.479, pursuant to Articles 46, 47 and 48 of the American Convention.

43. To summon the parties to a hearing that will be held at the Commission's headquarters in the course of its ninety-fourth regular session.

44. To continue its consideration of the basic issues posited in the present case.

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