

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 45/96; Case 11.492
Session: Ninty-Third Regular Session (30 September – 18 October 1996)
Title/Style of Cause: Jesus Armando Lara Preciado 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: Lara Preciado v. Mexico, Case 11.492, Inter-Am. C.H.R., Report No. 45/96, OEA/Ser.L/V/II.95, doc. 7 rev. (1996)

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I. BACKGROUND

1. According to the petition, the California, a vessel under the command of Mr. Jesús Armando Lara Preciado, sank on January 16, 1972. Although the event was occasioned by causes beyond Mr. Lara Preciado's control, from the outset the military authorities attributed the sinking of the vessel to a failure on his part to exercise due caution.
2. By order of the President of Mexico, the action to ascertain what had occurred and to institute criminal proceedings was suspended and an administrative penalty was imposed, whereby Mr. Lara Preciado was relieved of the command he held at the time and assigned a lower one, and his right to promotion was suspended.
3. Although the penalty was due to expire on April 1, 1974, the Minister of the Navy notified Mr. Lara Preciado that same year that the penalty would be extended for an additional two years, thereby precluding any possibility of advancement in the promotions slated for November 20, 1974.

II. PROCEEDINGS PRIOR TO FILING THE COMPLAINT BEFORE THE COMMISSION

4. Upon the decision taken by the Minister of the Navy, the petitioner applied to the federal courts for a writ of amparo [protection obtained to ensure due application of law and prevent arbitrary interpretation of law in violation of constitutionally guaranteed rights] that would render null and void the decision extending the penalty for a further two years (Amparo No. 768/74). He was granted the amparo on February 6, 1976, and the decision in question was

declared and void on grounds of being unfounded and not in keeping with the terms of articles 14 and 16 of the Mexican Constitution. Under the decision, the courts ordered that "Jesús Lara Preciado be reinstated at a rank equivalent to the one he held prior to the decision being challenged and accordingly be eligible for the same opportunities of promotion."

5. On October 10, 1977, the Minister of the Navy advised him "that I have submitted to His Excellency Lic. Jose López Portillo, President of the Republic, for his worthy consideration the promotion in reference, which the President deemed he would be unable to authorize by virtue of the discretionary powers conferred on him pursuant to Section IV, article 89, of the Constitution of Mexico".

6. The petitioner filed for a second writ of amparo with the judicial authorities (No. 429/78) whereby the decision to deny him promotion was declared null and void by virtue of being unfounded and not in keeping with the terms of articles 14 and 16 of the Mexican Constitution and on grounds that the powers conferred on the President pursuant to article 89 are not discretionary.

7. On October 3, 1980, Mr. Lara Preciado was notified that by a decision of the Constitutional President of Mexico and in compliance with the court order issued in the judgement of amparo No. 429/78, it had been deemed contrary to law to grant his promotion. The petitioner maintains that this decision is tainted with the same errors as the two previous ones, namely it is unfounded and not in keeping with the law, and he cites the personal files that he was never shown or allowed to peruse.

8. Since then, the petitioner has taken different steps at every level with a view to seeking enforcement of the judgement handed down in amparo No. 429/78 and to seek the release of the personal files that were alleged to impede his promotion. Mr. Lara Preciado filed formal complaints with various government authorities and on December 29, 1990, he submitted a complaint to the National Human Rights Commission of Mexico which found against the petitioner on October 25, 1991.

III. PROCESSING WITH THE COMMISSION

9. On March 25, 1994, the Inter-American Commission on Human Rights received a complaint that alleged a violation of the right to justice recognized in Article XXVIII of the American Declaration of the Rights and Duties of Man. The Commission indicated that in order to process the petition the petitioner would have to describe precisely what was alleged to have occurred and provide information concerning actions taken to exhaust legal remedies available within the country.

10. On March 13, 1995, the Commission received a communication in which the alleged facts were described together with information on actions taken within Mexican jurisdiction. The Commission registered the case as number 11.492 and forwarded the pertinent parts of the complaint to the Mexican government.

11. On September 6, 1995, the Mexican Government submitted its observations on the case, with a request that it be declared inadmissible.
12. On September 10, 1995, the petitioner submitted his considerations, rejecting the exceptions filed by the Government. The Commission communicated the pertinent facts of this report to the Government of Mexico.
13. On November 3, 1995, the Government presented its observations on the petitioner's allegations.
14. On February 13, 1996, the petitioner furnished the Commission with additional information on the case.
15. On April 6, 1996, the petitioner asked the Commission to make every effort to seek an amicable settlement, and set out his conditions.
16. On May 8, 1996, the Mexican Government indicated that in examining the petitioner's claims it felt that an amicable settlement which satisfied the petitioner's conditions would not be possible.

IV. POSITION OF THE PARTIES

A. Position of the petitioners

17. It is alleged that Mr. Jesús Lara Preciado's right to a fair trial recognized in Article XVIII of the American Declaration of the Rights and Duties of Man has been violated, that he has not been granted equal treatment before the law, that he has not been protected against abusive attacks on his honor and reputation, since he was not recognized as an individual with rights and obligations, was deprived of the right to a fair trial and due process of law where he could be given an impartial hearing, was subjected to cruel, infamous, and unusual punishment, and his right of petition was systematically abused since his requests in writing went unanswered.

18. It is further noted that the violations and crimes committed by various authorities against Mr. Lara are continuing at this time since the Government's report fails to demonstrate credibly that all of his requests, complaints, and protests have been given the treatment prescribed by law or that his petitions would have been examined and consequently rejects the petition on account of the lapse of time.

B. Position of the Government

19. The Mexican Government indicated that the "reasonable period" that should exist between the time of the violation of the rights and the filing of the complaint has not been observed since amparo No. 429/78 referred to in the petition was dated January 22, 1979, and the petition is from the year 1995. That as over 16 years have passed since the judgement referred to was handed down, it is difficult to assert that the petitioner did not have a reasonable period in which to present his claim to the IACHR. Moreover, even assuming that, for purposes of

computing the time period, October 25, 1991, the date on which the National Human Rights Commission handed down its decision and not the dates of the earlier judgements, is taken as the date of the final judgement, the petition would still be outside the prescribed period as six months had already elapsed since the date on which the individual concerned was notified.

20. The Mexican Government maintains that it was granted protection of the Federal Courts in the sense that the judgement on the request for promotion was duly founded and in keeping with the law and was in no way granted for the purpose of compelling the authorities to promote him. That amparo No. 429/78 resolved once and for all the question of the complainant's promotion.

V. FINAL CONSIDERATIONS

21. Considerations with respect to formal requirements for admissibility.

22. The petition at hand meets the formal requirements of admissibility pursuant to articles 32, 37, and 39 of the Regulations of the Commission as well as the terms of subparagraphs 1 a, c, and d of article 46 of the Convention.

23. With respect to the requirement set forth in article 46.b of the Convention and article 38 of the Regulations of the Commission, which establish:

Article 46 of the Convention:

1. Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements:

b. that the petition or communication is lodged within a period of six months from the date on which the party alleging the violation of his rights was notified of the judgment.

Article 38 of the Regulations of the Commission:

1. The Commission shall refrain from taking up those petitions that are lodged after the six-month period following the date on which the party whose rights have allegedly been violated has been notified of the final ruling in cases where the remedies under domestic law have been exhausted.

2. In the circumstances set forth in Article 37(2) of these Regulations, the deadline for presentation of a petition to the Commission shall be within a reasonable period of time, in the Commission's judgment, as from the date on which the alleged violation of rights has occurred, considering the circumstances of each specific case.

24. In this sense, the IACHR notes that the petitioner has claimed that the Executive Branch of the Mexican federal government has failed to comply with two judgements in connection with amparos granted in favor of Mr. Lara Preciado in 1976 and 1979. It further notes that after the communication sent to Mr. Lara Preciado on October 3, 1980, in which he was notified of the administrative decision in which it was deemed improper to authorize his promotion, the

individual against whom the injustice is alleged to have occurred has not availed himself of any legal remedy. Although it is evident from the records of the case that Mr. Lara Preciado did take steps to seek the enforcement of the judgement on amparo No. 429/78 and to have access to the personal files that were alleged to prevent his promotion, these steps were all of an administrative nature, thereby rendering it impossible to remove the gap of more than a decade that elapsed between the time the remedies were considered to have been exhausted and March 25, 1994, the date on which the first complaint lodged with the Commission was received. Furthermore, if the date on which the period of time in question is computed were to be taken as the point of reference, the decision of the National Human Rights Commission, a quasi-judicial body that issues recommendations, which are therefore not legally enforceable, would have been approximately three years after the deadline, since that body issued its ruling on October 25, 1991.

25. In view of the foregoing, the Commission concludes that the present complaint does not meet the requirements set out in article 46 of the Convention and article 38 of the Regulations of the Commission since both the six-month period and the reasonable period for submission of the complaint considering the circumstances have lapsed.

VI. CONCLUSIONS

26. To declare the complaint submitted in case 11.492 inadmissible in accordance with article 46.1.b of the Convention and article 38 of the Regulations of the Commission.

27. To transmit this report to the Government and to the petitioner.

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