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File Number(s): Report No. 9/97; Case 11.509
Title/Style of Cause: Manuel Manriquez San Agustin v. Mexico
Doc. Type: Decision
Decided by: Chairman: Ambassador John Donaldson;
First Vice Chairman: Dr. Carlos Manuel Ayala Corao;
Second Vice Chairman: Professor Robert Kogod Goldman
Members: Ambassador Alvaro Tirado Mejia, Dr. Oscar Lujan Fappiano, Dean Claudio Grossman, Dr. Jean Joseph Exume.
Dated: 12 March 1997
Citation: Manriquez v. Mexico, Case 11.509, Inter-Am. C.H.R., Report No. 9/97, OEA/Ser.L/V/II.98, doc. 6 rev. (1997)
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In this report the Inter-American Commission on Human Rights (the Commission) will consider the admissibility of the case under reference, in view that the United Mexican States (herein "the State" or "Mexico") has repeatedly stated that said case should be declared inadmissible because the petitioners have not exhausted the remedies under domestic law.

I. FACTS ALLEGED

1. According to the information presented before the Commission on June 9, 1995, by the petitioners, on June 2, 1990, while the Otomí Indian Manuel Manríquez San Agustín was working as a mariachi in the Plaza Garibaldi in the Federal District, several individuals requested the services of his group. Once inside the pick-up truck that they usually used for transportation, the individuals in question forced them to lie face down and drove them to the Office of the Public Prosecutor, where they forced them to get out of the truck blindfolded. They indicate that they knew later that the individuals who had arrested them were agents of the Federal District Judicial Police, that the arrest was illegal and arbitrary since there was no arrest warrant, and that there was no proof nor was it even suggested that Manuel Manríquez had committed the crime he was later charged with.

2. They add that once inside the Office of the Public Prosecutor, the officers tortured Mr. Manríquez to get him to confess to the murder of Armando and Juventino López Vásquez. Based on this confession, and taking notice thereof even though it had been retracted by the detainee, the Thirty-Sixth Criminal Judge charged him with the crime of murder and sentenced him to 27 years in prison, which decision was upheld by the Eleventh Criminal Division of the Superior Court of Justice, and then the appeals filed against it were denied by the First Three-Judge Criminal Court of the Federal District, by the Ninth Division of the Superior Court of Justice of the Federal District, and by the First District Court for Criminal Matters on October 15, 1992,

August 31, 1994, and January 27, 1995, respectively. At present, Manuel Manríquez San Agustín is being held in the Santa Marta Acatitla Penitentiary, serving the sentence he was imposed.

II. PROCEEDING BEFORE THE COMMISSION

3. On July 12, 1995, the Commission, pursuant to Article 34 of its Regulations, forwarded the pertinent parts of the petition to the State and asked it to provide information on the facts alleged and any other information that would help it determine whether in this case all domestic remedies had been exhausted, for which purpose it was given a period of 90 days.

4. On October 6, 1995, the State requested an extension of 30 days to assemble the documentation necessary to make an adequate response; the Commission acceded to this request on October 10, 1995.

5. On November 7, 1995, the State requested a second 30-day extension to gather information for an adequate response; the extension was granted by the Commission on November 8, 1995.

6. On December 7, 1995, the State presented its response regarding the case in progress.

7. On December 14, 1995, the Commission forwarded to the petitioners the pertinent parts of the State's response regarding the case.

8. On January 29, 1996, the petitioners requested a 30 day extension to prepare comments on the State's response, as they were waiting for relevant information; on January 31, 1996, the Commission granted the request.

9. On March 7, 1996, the petitioners forwarded to the Commission their comments on the response of the State.

10. On March 21, 1996, the Commission sent the State the pertinent parts of the petitioners' comments.

11. On April 29, 1996, the State forwarded its final comments to the Commission.

12. On May 22, 1996, the petitioners sent the Commission additional information on the case under reference.

13. On June 10, 1996, the Commission forwarded to the State the additional information submitted by the petitioners.

14. On July 8, 1996, the State sent the Commission its comments on the additional information provided by the petitioners.

15. On October 9, 1996, a hearing was held to discuss aspects related to the admissibility of the case.

III. POSITION OF THE PARTIES

A. Position of the Petitioners

16. The petitioners maintain that there has been an unwarranted delay, since the process of investigating the torture suffered by the accused has been extremely slow and drawn-out. They add that the pretrial investigation process began on November 17, 1992 —two and a half years after the incidents occurred— and it took more than 3 years to issue the respective arrest warrants, a delay not based on any excessive conscientiousness in the investigation, since, for most of the time, the investigation was discontinued.

17. They stated that the Office of the Attorney General for the Federal District declared itself incompetent on December 17, 1992, forwarding the case to the Office of the Attorney General of the Republic, which refused jurisdiction and remanded the case on January 27, 1993, no investigation has occurred to this date, denoting unwillingness to investigate and clarify the case.

18. They add that the National Commission of Human Rights, in its recommendation 35/94 of March 17, 1994, determined that Manuel Manríquez San Agustín was the victim of torture and arbitrary and prolonged detention, pointing out the need to conclude the investigation into these incidents, institute the corresponding criminal action, request arrest warrants, and ensure their immediate service.

19. They also point out that it was not until the petition was submitted to the Commission that the investigations into the torture went forward and some results were obtained, such as the arrests of some of the officers responsible for the torture; however, as yet, Mr. Manríquez has not been indemnified nor materially or morally compensated for the violations of which he was the victim, as the action against the police officers for inflicting torture has also been delayed, inter alia by the declaration of incompetence issued November 29, 1995 by the 63rd Judge of the Federal District.

20. According to Articles 5.2 and 8.3 of the American Convention, the use of torture is prohibited and any information obtained by using such methods must be barred as evidence, including not only torture but any other form of coercion. In the case under reference, it was proved that torture was inflicted, which the Office of the Public Prosecutor itself admits; consequently, said confession must be barred as evidence.

21. They also stated that according to the principle of presumption of innocence established in Article 8.2 of the Convention, any individual who is the subject of a criminal investigation must be treated as innocent so long as his guilt has not been proven; thus, if there is any doubt concerning the individual's guilt, it must lead to acquittal. Accordingly, they add that Mr. Manríquez continues to be deprived of liberty for the crime of murder, in which the only proof of his involvement in the crime is a confession to the investigative police, obtained through torture.

22. Finally, they stated that it is the State's duty to investigate criminal charges; therefore, it is the State which should have investigated and collected evidence, not the accused. Moreover,

as the State itself points out, the accused has exhausted all legal remedies available for petitioning the courts to reject as evidence the confession obtained through torture; however, all of his efforts have been unsuccessful.

B. Position of the State

23. The State affirmed that, under the Mexican legal system, establishment of the subjective element of the crime and the liability of the accused requires full and direct evidence giving rise to direct charges against specific persons, which specify circumstances of place, time, and method of execution of the criminal act. Contrary to the allegation of the petitioners, the judiciary found that evidence other than the confession and the documentary evidence substantiate the involvement of Manuel Manríquez in the crime for which he was sentenced.

24. It further states that according to the supposed violation of the Principle of Presumption of Innocence in the proceeding alleged by the complainant, no violation of the individual guarantees embodied in Articles 16 and 20 of the Political Constitution of the United Mexican States is established or suggested, because in fact the competent judicial authority applied said legal precept throughout the proceeding in accordance with Article 8.2 of the Convention; only at the conclusion of the proceeding was the guilt of the accused established, based on the evidence presented by the Office of the Public Prosecutor in the investigative stage of the proceeding.

25. The State also maintains that in accordance with Recommendation 35/94, the Office of the Attorney General for the Federal District conducted the pertinent investigations, at the end of which it concluded that the investigative police officers, Fernando Pavón Delgado and José Luis Bañuelos Esquivel, exceeded their authority and committed acts of torture against Mr. Manríquez San Agustín. On November 15, 1995, said office issued the corresponding complaint to the 63rd Criminal Court, which drew up the respective arrest warrants, which were served November 24, 1995 by the Office of the Attorney General for the Federal District.

26. The State believes that in the petition in question, the remedies under domestic law have not been exhausted, since a criminal trial is in progress against the investigative police officers, in addition to which the petitioner has not exercised the right to receive compensation through the Office of the Public Prosecutor pursuant to Article 20 of the Constitution, which establishes as an individual guarantee the right of a victim "to be compensated for damages, when appropriate."

27. Finally, the State maintains that there was no unwarranted delay in the investigation carried out by the Office of the Public Prosecutor, as the pace of the inquiries was consistent with the need for an exhaustive and meticulous investigation such as the one conducted in this case: therefore the exception referred to in Article 37(2)(c) of the Regulations of the Inter-American Commission is not applicable.

IV. GENERAL CONSIDERATIONS

A. Considerations regarding the competence of the Commission

28. The Commission is competent to hear this case as the pleas concern rights recognized and established in the American Convention: Article 1.1 on the obligation of the State to respect and guarantee the rights of persons subject to its jurisdiction; Article 5, on personal integrity; Article 7 on the right to personal liberty; Article 8, right to judicial guarantees; and Article 25, right to judicial protection, as provided for by Article 44 of said Convention, to which Mexico has been a party since April 3, 1982.

B. Considerations regarding the formal requirements of admissibility

29. The petition under reference satisfies the formal requirements of admissibility set forth in Articles 32, 37, 38 and 39 of the Regulations of the Commission. In fact, the petition contains information on the petitioners, an account of the alleged facts, an indication of the responsible State, and detailed information on the exhaustion of remedies under domestic law. In addition, the petition was lodged within the time allotted for its presentation, it is not pending in another international proceeding for settlement, nor is it substantially the same as a petition pending or previously examined and settled by the Commission.

30. Regarding the requirement of exhaustion of domestic remedies, Article 46.1.a. of the American Convention states that "admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45" shall require "that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law."

31. Item 2 of said article states that the provisions on the exhaustion of 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 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 an unwarranted delay in rendering a final judgment under the aforementioned remedies.

32. The petitioners have stated that the pretrial investigation began on November 17, 1992--two and a half years after the incidents occurred--and that it took more than three years for the respective arrest warrants to be issued.

33. In this regard, the State contended that there was no unwarranted delay in the investigation conducted by the Office of the Public Prosecutor, as the pace of the inquiries was consistent with the need for an exhaustive and meticulous investigation, which culminated with the arrest and criminal prosecution of the investigative police officers, Fernando Pavón Delgado and José Luis Bañuelos Esquivel.

34. On this subject, the Inter-American Court of Human Rights has stated that "the rule of prior exhaustion should in no case lead to resistance or delay until international action becomes futile."[FN1]

[FN1] Inter-American Court of Human Rights, Velásquez Rodríguez case, Preliminary Objections, Judgment of June 26, 1987, Series C No. 1, paragraph 93.

35. The Commission has also stated in this regard that "the right to a hearing within a reasonable time, as established by the American Convention, is based, inter alia, on the necessity of avoiding unwarranted delays which result in an abridgement or denial of justice injurious to persons alleging the violation of rights protected by said Convention."[FN2]

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

36. The records show that more than 6 years have passed since the incidents occurred, and that it was not until 1995 that the respective warrants were issued for the arrest of the alleged torturers, and, to date, no judgment has been delivered concerning them. Thus, the Commission believes that a period of more than 6 years constitutes an unwarranted and unusual delay in the investigations and proceedings, especially when it is alleged that the victim was sentenced to punishment depriving him of his liberty for a crime confessed under torture.

37. This Commission also wishes to state that it recognizes the progress made in the investigation of the incidents of torture and in the prosecution of the alleged perpetrators thereof, which is yet another indication of the willingness of the Mexican authorities to comply with the recommendations of the NCHR. However, the Commission believes that in the case under reference, the reasonable time established in Article 8 of the Convention has been exceeded.

38. The Commission also believes that the records contain sufficient proof that there is no appeal that can be filed seeking reconsideration of the decision whereby Manuel Manríquez San Agustín was convicted, an issue which the State has never disputed.

39. For the foregoing reasons, the Commission concludes that the exception to the exhaustion of remedies under domestic law established in Article 46.2.c of the Convention is applicable to this case and, therefore, exempts the petitioners from complying with said admissibility requirement.

Based on the foregoing considerations, de facto and de jure,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

40. To declare admissible the claim presented in case 11.509, pursuant to Articles 46, 47 and 48 of the American Convention.
41. To transmit the present report to the State and to the petitioners.
42. To place itself at the disposal of the parties concerned, pursuant to Article 45 of the Commission's Regulations, with a view to reaching a friendly settlement of the present case. The parties shall notify the Commission, in writing, of their wish to accept the friendly settlement procedure, within the thirty (30) days following notification of the present report.
43. To continue its consideration of the questions of law raised in the present case.
44. To publish the present report in the Annual Report to the General Assembly of the OAS.