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Title/Style of Cause: Luis Humberto Correa Mena, Ana Rosa Payan Cervera and the Partido Accion Nacional (PAN) v. Mexico
Doc. Type: Decision
Decided by: Chairman: Carlos Ayala Corao;
First Vice Chairman: Robert K. Goldman;
Second Vice Chairman: Jean Joseph Exume.
Dated: 3 March 1998
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1. On September 20, 1995, the Inter-American Commission on Human Rights (hereinafter "the Commission") received a petition from Luis Humberto Correa Mena and Ana Rosa Payan Cervera. Correa Mena had been a candidate for the office of Governor of the state of Yucatan, in the United States of Mexico (hereinafter "the State" or "Mexico"), running for the Partido Accion Nacional (hereinafter "PAN"), and Payan Cervera had been candidate for the State Executive Committee of that same party for the state of Yucatan (hereinafter the "petitioners"). In their petition they claim that the following rights, protected by the American Convention on Human Rights (hereinafter the "American Convention") had been violated: right to a fair trial (Article 8), right to judicial protection (Article 25) and right to participate in government (Article 23).

I. THE FACTS OF THE CASE

2. The petitioners allege that on May 28, 1995, several irregularities were committed during the elections for Governor of the state of Yucatan. As a result of these, several suits were brought before the competent tribunals of that state. These suits produced several judgments which the petitioners believe to be violations of the American Convention, since they have signs of "partiality in the installation, integration, functioning and action of the State Electoral and Superior Electoral Tribunals, which implied absolute denial of electoral justice to the people of Yucatan." The petitioners also mention that the Mexican state has failed in its duty to enact provisions in its internal law that would make effective the rights embodied in the American Convention, thereby also failing to comply with Article 2 of the Convention.

II. PROCEEDINGS BEFORE THE COMMISSION

3. On September 29, 1995, the Commission transmitted to the State the pertinent parts of the claims. It requested the State to report back to it on these claims. On three successive

occasions, the State requested extensions of the time to provide the information. The extensions were granted.

4. In a letter dated March 20, 1996, which the Commission received on March 21 of that same year, the State provided information, the pertinent parts of which were transmitted to the petitioners. After two extensions, the petitioners submitted their observations to the response from the State on May 23, 1996.

5. The pertinent parts of those observations were transmitted to the State which in turn submitted its final comments on July 12, 1996. On August 29, 1996, the petitioners submitted additional information consisting of its observations to the final comments of the State.

6. On August 29, 1996, the petitioners presented additional information consisting of observations to the State's final commentaries.

III. POSITION OF THE PARTIES

A. Position of the Petitioners

7. According to the petitioners, in the elections held on May 28, 1995, the PAN won a large victory in the Mexican state of Guanajuato, but it lost in the state of Yucatan in an unacceptable manner. They claim that the defeat came about as a result of a number of irregularities. The most glaring of these irregularities were set out in the claims that the PAN brought before the competent authorities within the deadline and in accordance with the forms established by law. The petitioners did not receive convincing and objective answers from the competent tribunals. They contend:

...the constant reactions of the Partido Revolucionario Institucional (PRI), its leaders, members, community representatives, as well as the attacks against the PAN in its political struggle show the absence of the government's willingness to cooperate in politics and force us to press this claim regarding the events in Yucatan...

8. According to the petition, the PAN legislators in the Congress of the state of Yucatan approved the new Elections Code. They believed that the Code contained significant advances over the earlier election laws and "that it also was an act of decisive willingness to conform all of their acts to a system of law." They stated that, as a consequence, the PAN ran candidates at all levels of government.

9. The petitioners state that numerous irregularities appear to have occurred during the aforementioned elections of May 28, 1995:

a. The candidacy of Mr. Victor Cervera Pacheco, who won re-election by changing the State Constitution to allow a sitting governor to be elected again (Article 116 of the Federal Constitution states that governors may not hold office for more than six years).

b. The many criminal charges regarding injuries to PAN candidates and party members were not heard.

c. Public funds were used in Yucatan to advance the interests of the official party's (PRI) candidates, as were humanitarian aid funds sent to Yucatan by the United Nations (UN).

d. Numerous irregularities occurred in connection with the mechanics and operations of the elections process itself. Examples are changes in the list of officials working the ballot reception tables, and printing of voting ballots. The PAN claimed that irregularities occurred in more than 200 boxes, out of a total of 1,527.

10. Nonetheless, the petitioners state that the claim that they bring before the Commission does not deal with the entire elections process which they recognize showed "substantial advances on the way toward democracy." Their grievance concerns what they believe was a lack of "expeditious, impartial and independent jurisdictional mechanisms that make it possible to resolve a case or dispute that arises in accordance with the law..." They maintain that the irregularities that occurred in the elections led the PAN to resort to the legal remedies provided for in applicable Mexican law. These cases were dismissed by the courts through decisions that the petitioners believe were biased and constitute violations of the right to due process.

11. Continuing, the petitioners state that the competent jurisdictional courts in elections matters in the state of Yucatan are the State Electoral Tribunal (TEE) and the State Superior Electoral Tribunal (TSE). The TEE has five regular members and five alternates, designated by drawing of lots from among candidates proposed by political parties and social organizations. The TSE, for its part, consists of three magistrates designated by the State Congress. Since the majority of deputies in Congress are from the Partido Revolucionario Institucional (PRI), the Congress designated the magistrates on the Superior Tribunal of Justice in a biased manner.

12. The petitioners describe the different ways that elections can be challenged in the state of Yucatan:

a. A written protest, which they say is a means of establishing the existence of alleged violations during elections day itself. This written protest must be submitted to the ballot table officers after the vote scrutiny and count is over, or to the appropriate Council, no later than 48 hours after the day of the election. This protest is a requirement for the recourse of disagreement to be in order;

b. The recourse of disagreement, filed with the TEE to challenge the results of an election; and

c. The appeal for reconsideration, which is filed with the State Superior Elections Tribunal, challenges a decisions on a recourse of disagreement handed down by the TEE if the decision could have changed the outcome of the election.

13. The violations of human rights that have been alleged in this case have taken the form, according to the petitioners, of TEE decisions on recourses of disagreement filed by the PAN. These decisions are discussed below, with a summary of the arguments offered by the TEE and the objections from the petitioners:

a. Resolution RI-73/995, of June 11, 1995, for failure to present the corresponding written protest. The petitioners maintain that the reasoning of the Tribunal is mistaken since the PAN has in its possession the written protests that were duly received by the District Council.

b. Resolution RI-39/995 of June 11, 1995, for untimely presentation of the written protest. According to the Tribunal, the written protest was presented on May 3, 1995, and the elections were held on the following May 28. The petitioners state that the date of presentation was June 3, 1995.

c. Resolution RI-39/995 of June 11, 1995, which was "out of order on the basis of time and without subject matter." The grounds cited by the TEE refers to a mistake that the claimant made by not properly accrediting his legal status. The petitioners maintain that there was no mistake and that the legitimacy of the representative was properly accredited.

d. Resolution RI-34/995 of June 11, 1995, terming the claim of little relevance and not being meritorious of a declaration of nullity as requested. The petitioners disagree with the TEE statement holding that the PAN validated and consented to the irregularities because its representatives signed the relevant certificates.

e. Resolution RI-01/995 of June 11, 1995, based on the belief that the blank spaces on the ballots taken from the urn with the certificates do not constitute an error serious enough to nullify the vote. According to the petitioners, the TEE ignored the express jurisprudence of the Federal Electoral Tribunal on this matter.

14. The PAN brought an appeal before the TSE to reconsider the resolutions of the TEE. In its Resolution RR-01/95, the TSE argues that the individuals who filed the appeal do not have standing since their legal status is not accredited in accordance with law. The petitioners maintain the following:

- a. The legal status of Ana Rosa Payan and Jacinto Sosa Novelo is duly accredited;
- b. The resolution challenged was not a decision but a judgment that could be challenged;
- c. The PAN had challenged the election of governor as a whole and thus they contend there was "subject matter" in the recourse filed;
- d. The Tribunal refused to dispense justice in the case.

15. The petitioners contend that there was partiality in the membership and action of the tribunals responsible for hearing and deciding on elections appeals filed by the political parties. According to the claim, those tribunals do not meet the principle of impartiality and legality in their actions since their members have personal interests in settling the disputes that come before them. For that reason, the petitioners believe:

...[they] lacked the necessary institutional controls to guarantee the objectivity of the elections, or the independence needed to enjoy judicial guarantees and to secure protection of the courts, thereby violating the human rights set out in the American Convention on Human Rights.

16. In their observations to the response from the State, the petitioners insist that their petition is in order. They repeat that domestic remedies were exhausted by the claim of alleged elections irregularities filed in good time and form with the corresponding tribunals.

B. Position of the State

17. The State argues that the petition is not admissible because domestic remedies had not been exhausted. It states that the elections tribunals of the state of Yucatan were chosen with the

involvement of PAN members, in strict accordance with principles of legality, certainty, independence, impartiality and objectivity. The State also maintains that in view of the criteria followed by the elections tribunals of the state of Yucatan, the election victories of the PAN were confirmed for several deputy seats and municipal offices and for the position of Chairman of City Council for the city of Merida, the capital of the State.

18. With respect to the specific resolutions mentioned by the petitioners and summarized above, the State indicated that these resolutions were taken on the basis of perfectly valid and current legal and jurisprudential criteria which it explains in full in its response. The State concludes that the resolutions are in full conformity with law.

III. ADMISSIBILITY

19. The petition meets the following formal requirements of admissibility established in Article 46 of the American Convention:

- a. The petition was lodged within the time periods established in Article 46.1.b of the American Convention and Article 38 of the Rules of Procedure of the Commission.
- b. The subject of the petition is not pending in another international proceeding.

20. The State has said that the grounds for denial of admissibility is the fact that the petitioners had not exhausted the domestic remedies provided under Mexican law since they had not turned to competent domestic organs to hear the facts. Since the State has invoked lack of exhaustion, it is the duty of the Commission to examine that requirement for admissibility.

A. Requirements of Article 46.1.a

21. The Commission notes that the appeals of elections in Yucatan are set out in the Elections Code of that Mexican state, as mentioned in this report. To nullify an election of governor, the requirement would be nullifying 20% of the votes received in the ballot boxes of the state or failure to receive 20% in the ballot boxes as a result of non-placement of the boxes. As established in Article 25 of the Political Constitution of the State of Yucatan, the decisions of the TSE are final and incontestable.

22. The petitioners claimed that after the elections for governor of the state of Yucatan, the PAN filed recourses of disagreement with the TEE, all of which were denied between June 11 and 13, 1995.

23. The Inter-American Court of Human Rights has determined that when the State claims non-exhaustion of domestic remedies and proves the existence of domestic remedies that could have been used, the petitioner has the burden of proving that domestic remedies were exhausted or that the exceptions provided for in Article 46.2 of the American Convention applied.[FN1] Since the parties in this case do not dispute that the appeal for reconsideration is a domestic remedy that exists, in principle, to challenge a decision reached by the TEE on the recourse of disagreement, it was the duty of the petitioners to prove that they had exhausted the remedy or

that the existing exceptions to the requirement for exhaustion of domestic remedies were in order.

[FN1] Inter-American Court of Human Rights, Velasquez Rodriguez Case, judgment of July 29, 1988, series C, No. 4, par. 60.

24. The Commission observes that the petitioners pointed out a number of factual and legal grounds for which they disagreed with the denial of the appeal for reconsideration that the PAN had filed with the TSE. In its resolution, the TSE argued that the complainants did not have legitimate standing since their personality had not been legally accredited.

25. After examining the evidence provided in this case, the Commission believes that the petitioners' contention that they availed themselves of the appeal for reconsideration of all the aforementioned decisions reached by the TEE, pertaining to the aforementioned recourses of disagreement, is not supported by the evidence attached. In effect, the purpose of the appeal for reconsideration on which the TSE decision was made in case No. RR-01/95 was to challenge the decision reached by the TEE on June 11, 1995, in the recourse of disagreement processed under case No. RI-70/95; therefore, the review of the decisions reached in cases Nos. RI-73/995, RI-39/995, RI-34/995 and RI-01/995 was not requested in that reconsideration appeal.

26. In effect, the written statement presenting the aforementioned appeal for reconsideration reads, verbatim:

...I come to file in good time and form the present APPEAL FOR RECONSIDERATION of the Resolution of the Elections Tribunal of the State of Yucatan, notified on June 12, 1995, at 3:40 a.m., which resolved the recourse of disagreement presented by the Partido Accion Nacional itself, which was on the docket of the aforementioned court as No. RI-70/95.

To demonstrate the extremes of the aforementioned Article 306, we once again request that the Superior Elections Tribunal add to the case that is opened as a result of this appeal for reconsideration all the earlier cases opened as a result of the recourses of disagreement brought by the Partido Accion Nacional, whose examination, as will be shown below, would result in nullification of the election for governor. In addition, another violation of procedure and consequently reparable through this appeal is the fact that the Elections Tribunal of the State of Yucatan did not combine, also illegally, the recourses of disagreement...

27. Resolution RR-01/95 of the TSE also fails to make any reference to the resolutions that according to the petitioners were appealed and decided by that Superior Tribunal. In that sense, that decision establishes verbatim the following:

Having seen, to reach a decision on the admission of the appeal for reconsideration No. RR/01/95 (...) of the decision handed down by the State Elections Tribunal on the eleventh day of June of the present year in which the aforementioned official elections organ decided to dismiss, for being obviously out of order, the recourse of disagreement No. RI/70/95...

28. The evidence provided by the petitioners shows that they filed the appeal for reconsideration in connection with a TEE decision which was different from the decisions that the petitioners claimed that they had challenged by means of that recourse. Furthermore, the same evidence indicates that the petitioners requested the TSE to combine several cases that had already been decided by the TEE. Nevertheless, the petitioners offer no evidence that would lead to establish that the TSE had decided to combine the cases as requested, or that in any way the decision of this Tribunal would embrace cases Nos. RI-73/995, RI-39/995, RI-34/995 and RI-01/995. To the contrary, the resolution of the appeal for reconsideration deals solely, and expressly, with the recourse of disagreement identified as No. RI-70/995.

29. The petitioners have not claimed that domestic remedies did not exist to challenge those decisions or offered any other grounds that would establish exceptions for compliance with the requirement of exhaustion of domestic remedies. Consequently, the Commission finds that the domestic remedies were not exhausted with respect to decisions Nos. RI-73/995, RI-39/995, RI-34/995 and RI-01/995 taken by the TEE of Yucatan.

30. Continuing its examination of the concrete facts denounced by the petitioners, the Commission moves on to examine the decision of June 17, 1995, of the TSE. Since there is no appeal of a TSE decision, it is understood that the decision alone exhausts domestic remedies, thereby complying with that requirement with respect to the specific question ruled on by the TSE.

B. Requirements of Article 47.b

31. In deciding of the admissibility of petitions, the Commission has clarified that the protection afforded by the supervisory organs of the Convention has an essentially subsidiary position with respect to the jurisdictional organs of the states, under certain circumstances. The Preamble to the American Convention expresses in its second paragraph:

Recognizing that the essential rights of man are not derived from one's being a national of a certain state, but are based upon attributes of the human personality, and that they therefore justify international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American states.

32. This is the foundation of the rule requiring prior exhaustion of domestic remedies and also the so-called "fourth instance formula," which defines the Commission's competence to declare admissibility or decide on whether a petition does or does not tend to establish a violation of any of the rights guaranteed by the American Convention.

33. The Commission has provided for exceptions to the "fourth instance formula" in the following terms:

In democratic societies, where the courts function according to a system of powers established by the Constitution and domestic legislation, it is for those courts to review the matters brought

before them. Where it is clear that there has been a violation of one of the rights protected by the Convention, then the Commission is competent to review.

The Commission has full authority to adjudicate irregularities of domestic judicial proceedings which result in manifest violations of due process or of any of the rights protected by the Convention.[FN2]

[FN2] Report No. 39/96 (Case No. 11673, Santiago Marzioni, Argentina), Annual Report of the Inter-American Commission on Human Rights, 1996, OEA/Se.L/V/II.95, Doc. 7 rev., March 14, 1997, pars. 60 and 61, respectively, page 89.

34. For the purpose of determining whether the petitions meets the substantive requirement of admissibility embodied in Article 47.b of the American Convention, the Commission shall determine whether the facts raise a colorable claim of violation of the rights guaranteed by the American Convention.

35. In this case, the petitioners claim partiality in the installation, integration, functioning and action of the aforementioned election tribunals as the final cause for the decisions taken by the TEE and by the TSE of Yucatan regarding the elections appeals filed for the purpose of challenging the actions relating to the election of governor held in the state of Yucatan on May 28, 1995. In accordance with the explanation given above, the aforementioned decisions themselves constitute the concrete violations alleged by the petitioners.

36. Following the considerations made above, the Commission is to examine decision RR-01/95 to determine whether that decision reveals a violation of any of the rights protected by the American Convention. That decision did not take up the basic issue of the subject discussed since it considered that the legal status of the petitioners had not been duly accredited for the purpose of bringing the appeal for reconsideration, and because the decision could not be challenged by means of that recourse. The petitioners made no reference to the facts discussed before the TEE or the proceedings themselves, nor the decision of the TEE. Consequently, the Commission lacks the examination information it needs to enable it to consider whether the aforementioned decision by the TSE represents a violation of any right guaranteed by the American Convention.

37. Now the Commission will examine whether decision RR-01/95 was the result of some process that violated judicial guarantees. If this is true, as explained before, the Commission would have the jurisdiction to hear and rule on the reasoning of that decision. The TSE, it was noted, rejected the appeal for reconsideration on the grounds that the petitioners did not have legitimate standing, as follows:

...as for citizen Payan Cervera, it should be noted that the documents which she attached to the written statement containing the appeal for reconsideration with which she seeks to accredit her legal status before this State Superior Elections Tribunal do not include the proper document for doing that. The document do not comply with the requirement of Article 331.II of the Code

pertaining to this matter which reads, verbatim: "SECTION II. The members of state and municipal committees corresponding to the district seat or its equivalents. In this case, THEY SHOULD ACCREDIT THEIR LEGAL STATUS WITH AN APPOINTMENT MADE IN ACCORDANCE WITH THE STATUTES OF THE PARTY." The only thing that can be inferred from those documents is that they deal with a written statement containing a list of persons who presumably make up the State Executive Committee of the Partido Accion Nacional in this legal entity, sent to the Chair of the State Elections Council, licentiate Elena Castillo, signed by a person who says that he is the Deputy Secretary of the National Executive Committee of the Partido Accion Nacional, but does not provide accreditation in the form of any document to explain that he has the legal status that he suggests, or the authority to certify any document. In addition, the petitioner did not attach the appointment statement granted in accordance with the statutes of that political party, showing that citizen Ana Rosa Payan Cervera has the authority to appear before the Electoral Tribunals in representation of that political institution. As a corollary of the foregoing, it must be concluded that Payan Cervera, by not attaching the documents explaining her legal status, failed to meet the obligation set out in Article 315.III of the Elections Code of this federal entity, and therefore lacks legal standing to file the recourse which was the subject of this present examination.

38. In their written statement of observations to the response of the State, the petitioners did not bring any concrete juridical arguments to bear against the decision made by the Superior Tribunal but pointed out the following:

It is incomprehensible that Ana Rosa Payan, the Chair of the State Executive Committee of the PAN in Yucatan, who registered all the PAN representatives before the elections bodies and the candidates for the several popular election positions that were contested in that elections process, would not have the legal status to appear before the Superior Elections Tribunal. This is nothing but one more absurdity of the elections authorities of Yucatan.

39. With respect to the accreditation of the legal status to appeal of Mr. Jose Jacinto Sosa Novelo, decision RR-01/95 provides as follows:

With respect to citizen Jose Jacinto Sosa Novelo, it is also seen that the credentials he bears issued by the Elections Institute of the State of Yucatan do not properly accredit his status as a legitimate representative of the Partido Accion Nacional. That document does not meet the requirements to accredit the petitioner's legal status or to entitle him to file the recourse that concerns us now, under the terms of the provisions of the last paragraph of Article 331 of the State Elections Code, which reads: "FOR THE PURPOSES OF FILING THE RECOURSES, THE LEGAL STATUS OF PARTY REPRESENTATIVES TO THE ELECTIONS ORGANS SHALL BE ACCREDITED BY MEANS OF A CERTIFIED COPY OF THE APPOINTMENT IN WHICH THE RECORDING APPEARS."

40. In their written statement of observations to the state's response, the petitioners did not advance any concrete legal arguments to counter the decision reached by the Superior Tribunal, but pointed out the following:

It is incomprehensible that Jacinto Sosa Novelo does not have an accredited legal status since, throughout the entire elections process, he acted to advance the interests of the Partido Accion Nacional before the State Elections Council.

41. Based on the statements transcribed above, it is clear that decision RR-01/95 has the legal grounds, under the laws of Mexico, to view the petitioners as not being legitimately accredited in those proceedings. Furthermore, the petitioners have not brought any legal argument to counter the merits of the decision examined but merely confine themselves to pointing out that those decisions were incomprehensible, primarily because the petitioners had represented the PAN before other elections authorities.

42. The petitioners confined themselves to stating to the Commission that the decision to dismiss the question of the legitimacy of the petitioners was arbitrary. However, they failed to give the reasons that the decisions were arbitrary and did not provide in the inter-American arena the documentary evidence that was presented to the TSE to accredit the legal status of the petitioners. Merely saying that the decision is incomprehensible does not provide any evidence of irregularity in the process, and the unproven fact that the petitioners had represented the PAN before other elections authorities also does not prove it since there could have been other qualifications in existence for accrediting legal status, depending on the authority before whom the person appeared.

43. In the same sense, the petitioners contend that the action of the TSE was arbitrary since, according to the provisions of Article 315 of the Yucatan Elections Code, the TSE was obligated to require the appellants to comply with the requirement of accrediting their legal status in the event that the requirement had been omitted. The Commission observes that if the Superior Tribunal had effectively been obligated to rectify the process by requesting the appellants in the recourse to accredit their status, and if that obligation had not been complied with --or if it had been complied with, if the court had ignored it--, that might set forth a colorable claim of violation of due process that would entitle the Commission to hear and decide on this case.

44. Nevertheless, the aforementioned Article 315 of the Yucatan Elections Code, whose pertinent parts were transcribed in full, establishes the following:

To file recourses, the following requirements must be met:

I. - They shall be presented in writing to the authority who performed the act or issued the resolution;

(...)

III. - In the event that the appellant does not have his legal status accredited with the authority who performed the act or issued the resolution, he shall provide the documents accrediting such status;

(...)

VII. - Record the name and the signature of the appellant.

In the case of the recourse of disagreement, besides the requirements pointed out in the preceding sections, the following must also be complied with:

a) The election that is challenged, with a specific indication that the object is the count, the declaration of validity of the election and, consequently, the granting of the individual recordings.

In no case may more than one election be challenged in a single recourse;

b) The individualized mention of the act of the municipal, district or state count certification that is challenged;

c) The individualized mention of the ballot boxes whose nullification of votes is requested in each case, and the grounds advanced for each of them; and

d) The relationship, if any, between the recourse and the other challenges.

If any other requirements pointed out in the clauses that precede the foregoing paragraph of this article are omitted, the elections organ that is competent to resolve the recourse shall require the appellant in court to comply with this within a term of twenty-four hours as from the time set in court to comply with the requirement, with the understanding that failure to do so will nullify the filing of the recourse.

The appellant of an appeal for reconsideration, in addition to meeting the requirements mentioned above, shall indicate precisely the act of the State Elections Tribunal that he challenges, under the suppositions set out in Article 311.IV of this Code.

45. The Commission notes that the article transcribed above does not indicate that the TSE is obligated, during the processing of the appeal for reconsideration, to request the appellant to attach the documents accrediting his legal status when the person has not attached them to the original written statement. In effect, the writing of that article makes it obvious that the TSE only has that obligation when, in hearing a recourse on disagreement, it sees that the appellant has omitted a requirement set out in clauses a), b), c) and d) of the paragraph pertaining to the additional requirements that must be met in the recourse of disagreement.

46. Bearing in mind the facts alleged, as well as the previously stated grounds under domestic law, the Commission concludes that since the State of Yucatán Superior Elections Tribunal had not required the appellants to comply with the requirement of accrediting their legal status in the case in question, this does not meet the extremes to determine that the Tribunal committed some arbitrary procedure, irregularity or violation of the right to due process, enshrined in the American Convention.

47. The petitioners have indicated that decision RR-01/95 went against them because of partiality in the installation, integration, functioning and action of the TSE. The fact that two of the three magistrates of that Tribunal were designated from among the magistrates of the State Justice System, and that these persons, in turn, in accordance with the Yucatan State Elections Code, were designated by the Congress of the State of Yucatan is not sufficient evidence, the Commission believes, that in the case under review those magistrates have acted in a partial

manner. The Commission presumes --in principle, and unless otherwise proven--, that the Congress of the State of Yucatan, independently of the political affiliation of its members, chose impartial and independent magistrates to be the members of the State Superior Tribunal of Justice (TSJ). This does not mean that the presumption is absolute nor general, or that in the future those magistrates could not commit violations of due process. However, such decision, as was ultimately established, must be duly proven with specific elements applicable to the instant case. Having made this qualification, it is the duty of the Commission to determine whether the facts and the elements provided in this case are sufficient to characterize a colorable claim of violation of the right of due process in prejudice to the petitioners.

48. The petitioners contend, as a concrete manifestation of the alleged partiality of the TSE, that one of the TSE members is magistrate Amira Hernandez Guerra de Cervera, the spouse of the candidate for the office of governor of the State of Yucatan who won the elections challenged by the PAN. In its response, the State showed that precisely because of that circumstance, that magistrate abstained from participating in the session of the TSJ which elected the members of the TSE. The petitioners replied that even though the magistrate had abstained from participating in the aforementioned meeting, that does not mean that she did not influence and guide the other magistrates who did participate in the meeting and that she could have even had some influence of the resolutions of the TSE.[FN3]

[FN3] In that regard, the European Commission of Human Rights in a case where the impartiality of a domestic court was raised, has stated the following:

The Commission recalls that what is decisive is no the subjective apprehensions of the subject concerning the impartiality required of the trial court, however understandable, but whether, in the particular circumstances of the case, his fears can be held to be objectively justified.

Application No. 17265/90, Alvaro Baragiola V. Switzerland, Yearbook of the European Convention on Human Rights, pp. 105-106.

49. By virtue of the above analysis, the Commission believes that the aforementioned allegation of the petitioners has no basis. Obviously, if the spouse of a candidate for the office of governor had served as a judge in a challenge of the election in which her spouse participated, or had participated in the designation of the magistrates who ruled on the challenge, then the situation would have been different. But if that magistrate expressly abstained from participating in those acts, the Commission may not, based on speculation about any influence that the magistrate might have been able to exert on other magistrates, who are presumed to be equally independent and impartial, reach the conclusion that decision RR-01/95 was made in a biased manner so as to violate due process.

50. The Commission also observes that decision RR-01/95 was taken within a reasonable term and with due guarantees by a national court with jurisdiction over the matter whose dependence or partiality has not been established in any manner. Accordingly, that decision, and the process that resulted from it, do not show any violation of the right to judicial guarantees protected by the American Convention.

IV. CONCLUSION

51. The Commission concludes that the petition filed in this case does not meet the requisites of admissibility under Article 46.1.a of the American Convention, as seen from the first part of the analysis of the petition. Also, the Commission concludes with respect to the second part of the analysis that the petition does not raise a colorable claim of a violation of any of the rights protected by the American Convention. Accordingly,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

- A. To declare the instant case admissible.
- B. To transmit this report to the parties; to make it public; and to include it in the Commission's Annual Report to the OAS General Assembly.