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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 33/98; Case 10.545
Session: Ninty-Ninth Special Session (5 – 8 May 1998)
Title/Style of Cause: Clemente Ayala Torres et al. v. Mexico
Doc. Type: Decision
Decided by: Chairman: Carlos Ayala Corao;
First Vice Chairman: Robert K. Goldman;
Second Vice Chairman: Jean Joseph Exume.
Commissioners: Alvaro Tirado Mejia, Claudio Grossman, Helio Bicudo.
Dated: 5 May 1998
Citation: Ayala Torres v. Mexico, Case 10.545, Inter-Am. C.H.R., Report No. 33/98,
OEA/Ser.L/V/II.102, doc. 6 rev. (1998)
Represented by: APPLICANT: the Partido de la Revolucion Democratica
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1. On April 17, 1990, the Inter-American Commission on Human Rights (hereafter "the Commission" or the AIACHR") received a complaint submitted by representatives of the Partido de la Revolución Democrática (hereafter "the petitioners") relating to a series of events surrounding the elections that were held on December 3, 1989, in the State of Guerrero, Mexico. The petitioners allege in connection with those events that Mexico (hereafter "the State", "the Mexican State", or "Mexico") violated the following rights enshrined in the American Convention on Human Rights (hereafter the "American Convention"): the right to life (Article 4), the right to personal integrity (Article 5), the right to due process (Article 8), the right to privacy (Article 11), the right to freedom of thought and expression (Article 13), the right to property (Article 21), the right to freedom of movement and residence (Article 22), and political rights (Article 23).

I. EVENTS ALLEGED

2. The petitioners claimed that, in connection with the elections of December 3, 1989 in Guerrero, a series of widespread attacks was launched on popular sovereignty and on the political rights of the inhabitants of that state, carried out at several stages ("preparation, voting, scrutinizing and counting of votes in the polling booths, in municipal and district committees, certification of results and qualification..."). The petitioners maintain that the then Governor of Guerrero, José Francisco Ruiz Massieu,[FN1] had sponsored, condoned and protected such violations of the human rights enshrined in Article 23 of the American Convention.

[FN1] José Francisco Ruiz Massieu was murdered on September 24, 1994. At the time, he was the Secretary-General of the National Executive Committee of the ruling party, the Partido Revolucionario Institucional (PRI).

3. The series of events denounced, committed allegedly by agents of the Government of Guerrero, or by persons under its protection, include the murder of several persons. Some of these victims were named by the petitioners, who provided data to the IACHR on the circumstances of their deaths. The petitioners also denounced the action of agents of that Government, for what they consider the use of excessive force against the people who were demonstrating over the State of Guerrero's handling of the election results. Finally, the petition includes a denunciation of illegal deprivation of liberty and acts of defamation and calumny committed by those authorities, to the prejudice of the PRD leaders and the demonstrators.

4. With respect to the right to due process, the petitioners maintain that the Governor, Ruiz Massieu, canceled the right to an open trial in several cases; that the Attorney General of the State of Guerrero refused to receive complaints about certain acts and to investigate certain crimes; that no measures were taken with respect to what were qualified as 26 political murders committed as a result of the events, and that were confirmed subsequent to the elections of December 3, 1989; and that the parties responsible for the numerous arrests, injuries and deaths relating to the events of February 27, 1990 and March 6 of that year, enjoyed impunity. The petitioners consider that these factors demonstrate that the conditions for prosecuting the crimes claimed to have been committed by Governor Ruiz Massieu and his presumed agents do not exist in Guerrero.

II. PROCEEDINGS BEFORE THE COMMISSION

5. On May 3, 1990, the IACHR requested information from the State, which replied on August 8, 1990, asking that the petition be declared inadmissible.

6. On September 29, 1990, the petitioners submitted their observations, in which they raised new allegations. Thereupon, the Commission requested the State to submit its comments within a period of 30 days, and set a period of 90 days for submitting its observations on the expanded complaint.

7. On December 28, 1990, the Mexican State presented its comments relating to the events originally denounced by the petitioners, and on March 25, 1991, it submitted information on the new allegations.

8. During its 83rd session, the IACHR held a hearing on this case, in the presence of representatives of the petitioners and the Mexican State.

9. On October 24, 1997, the IACHR requested both parties to update the information on certain specific questions relating to the case. The State replied on November 25, 1997, indicating that the information would be transmitted as soon as it was provided by the Office of the Attorney General (the "PGJ") of the State of Guerrero.

10. The petitioners sent the requested information on January 20, 1998. This information was transmitted to the State on February 4, with a request for observations. On March 4, 1998, the State sent a further communication, in which it asked that the case be archived.

III. POSITION OF THE PARTIES

A. Position of the petitioners

11. The petitioners argue that the fact that a petition may have a political motivation does not make it inadmissible; that the petition is well founded in specific acts of human rights violations and not in any general criticism of a political system; that government arbitrariness in Mexico is such as to render domestic remedies inaccessible or inoperative, and that it is singularly difficult to document that they have been exhausted; and that the concrete facts in the petition were denounced in Mexico, but that they were arbitrarily dismissed by the authorities involved.

12. According to the petitioners, domestic remedies may be deemed exhausted by the request for impeachment of the Governor of Guerrero that was presented on January 10, 1990, by legislators of the PRD to the National Congress. That request was rejected by the Congress on March 9, 1990.

13. With respect to the duplication of proceedings, as alleged by the State, the petitioners stated that on April 3, 1990, they presented a petition regarding these events to the United Nations Human Rights Commission, but that subsequently they sent a communication to the Secretary General of the United Nations in which they requested that the Commission analyze their claim in the context of the general situation of human rights in Mexico, consistent with the terms of Article 39.2 of the IACHR Regulations.

14. The petitioners insist that the events originally denounced were committed as described in the complaint and not in the manner indicated by the State. They reiterated that they had exercised all remedies available in domestic jurisdiction to have the persons responsible for those deeds investigated and prosecuted. In their last communication, they provided updated information on the principal aspects of their complaint, with the proviso that they had been unsuccessful in their attempts to have the PGJ of Guerrero provide more data.

B. Position of the State

15. In its response to the petition, the State requested the Commission to declare the petition inadmissible, for failure to exhaust local remedies. The State also maintained that the petition was "clearly politically motivated", and that there was a duplication of proceedings, since the petitioners had presented to the United Nations a complaint identical to the one presented before this IACHR, to which Mexico had responded on July 20, 1990.

16. The Mexican State also provided information on the facts related by the petitioners, stating that the State of Guerrero has a legal system and specific mechanisms for the protection of human rights. It also maintained that, in the face of the adverse results of the elections of

December 3, 1989, the petitioners had failed to question those results in the domestic courts. On those exceptional occasions when they did bring actions, they did so without due regard to the corresponding procedures and time limits, and they directed their actions to organs that had no jurisdiction.

17. The State then went on to dispute each and every one of the facts alleged by the petitioners, concluding in some cases that no violation of the rights protected by the American Convention had been demonstrated, and in others that the petitioners had failed to offer evidence, and that for these reasons the actions they had brought in Mexico had been unsuccessful. With respect to the alleged violation of political rights, Mexico maintained that the Commission lacks competence to hear complaints about the electoral processes of member states of the Organization of American States (OAS).

18. With respect to the political proceedings against the Governor of Guerrero, the State maintained that that action did not exhaust domestic remedies, and it pointed to the various remedies provided by law to that effect.

19. The State subsequently added, with respect to the duplication of proceedings, that the Working Group on Communications of the Subcommittee on Prevention of Discrimination and the Protection of Minorities of the United Nations Human Rights Commission had set aside the petition brought by the PRD, in light of the timely and duly documented response received from Mexico.

20. In its last communication, the State requested that the case be archived, on the grounds that the petitioners had failed to provide their information in a timely manner.

IV. JURISDICTION

21. The IACHR has prima facie jurisdiction to hear this case, because it deals with allegations concerning rights recognized and protected by the American Convention. The events denounced took place when the obligation to respect and guarantee the rights established in that Convention was in full force in Mexico.[FN2]

[FN2] The Mexican State deposited its instrument of ratification of the American Convention on April 3, 1982.

V. ADMISSIBILITY

22. The Commission's rulings on the admissibility of the cases brought before it are intended to provide greater security and legal certainty, besides focusing the attention of the parties on the central issues at stake.[FN3] Bearing such considerations in mind, the IACHR will examine the extent to which the admissibility requirements of the American Convention and its Rules of Procedure have been fulfilled, with respect to the following specific matters raised:

- the deaths of Clemente Ayala Torres, José Manuel Palacios Vargas, and Bernabé Flores Torreblanca, on January 3, 1990, and the death of Santos Hernández García on January 24, 1990, all of which occurred in Coyuca de Benítez;
- the deaths of Adelaido Barrera Sánchez, Ismael Reyes de la Cruz, and Antonio Pablo Terreros, which occurred on January 22, 1990, en El Durazno;
- the violent suppression of the marches held on February 27, 1990, in Acapulco and Zihuatanejo;
- the death of Donaciano Rojas Lozano, on February 27, 1990, in Acapulco;
- the death of Florentino Salmerón García on February 27, 1990, in Zihuatanejo;
- the death of Leonel Felipe Dorantes and of other persons on March 6, 1990, in Cruz Grande;
- the events that occurred in the municipal offices of the State of Guerrero and their immediate surroundings on March 6, 1990;
- the death of Félix Ventura, on March 17, 1990, in Conachinicha;
- the arbitrary arrest and torture of Eloy and Ladislao Cisneros Guillén;
- the disappearance of Andrés de la Cruz Zapacala and Daniel López Alvarez;
- the investigation of all of the above mentioned events and, as the case may be, the prosecution of those responsible;
- compliance with the standards of due process and effectiveness of remedies in the respective cases.

[FN3] See, inter alia, Report No. 7/98 (Case 11,597 - Emiliano Castro Tortrino), OEA/Ser.L/V/II.98, Doc. 15, 2 March 1998, para. 15, page 4; and Report No. 49/97 (Case No. 11,520 - Tomás Porfirio Rondín and others, "Massacre of Aguas Blancas?", Mexico), OEA/Ser.L/V/II.98, 18 February 1998, para. 50, page 8.

A. The State's arguments for closing the case

23. The Mexican State replied to the request to update information on the case, indicating that:

...the Attorney General of the State of Guerrero is preparing the requested information, which will be transmitted as soon as it is available.

24. Only two months later, however, the State replied to the IACHR's communication that had asked for observations on the updated information presented by the petitioners, and maintained that that information had not been submitted within the proper time. Therefore, the State considered that "...the proceedings that have been conducted within this body have already expired, in accordance with the general principles of law and of comparative procedural law." The State also maintained that the last act had occurred four years previously, "which would have entitled the Mexican Government to believe that the case before us today had already been closed by the IACHR because the petitioners had failed to substantiate their complaints".

25. The State referred to Article 42 of the IACHR's rules of procedure, maintaining that:

...the Government of Mexico considers that the legal principle cited earlier could be interpreted contra sensu to the effect that the Inter-American Commission of Human Rights closed the case when it failed to receive the observations of the petitioners to the Mexican Government=s response, since the Commission did not make a ruling, within a reasonable period of time, on its admissibility or otherwise. It should be noted that in either case, the Mexican Government should have been informed.

26. Invoking other regulatory provisions, principles of comparative procedural law on the expiry of jurisdiction, and Article 373 (IV) of the Federal Code of Civil Procedures of Mexico, the State concluded that the observations of the petitioners were "manifestly" out of order because of the passage of time, and it therefore asked the IACHR to close the case.

27. The IACHR notes, in the first place, that there is a clear contradiction in the Mexican State=s position: in its communication of November 29, 1997, it had responded to the IACHR's request for information on the same case, indicating that such information would be provided "as soon as it is available"; on the other hand, on March 4, 1998, it "assumed" that the case had been closed by the Commission because of the passage of time.

28. The question must be addressed in a manner consistent with the standards of the inter-American system of human rights, which govern the handling of individual cases before the IACHR. Article 48.1.b of the American Convention provides that after the information has been received, or after the period established has elapsed and the information has not been received, the Commission shall ascertain whether the grounds for the petition or communication still exist. If they do not, the IACHR must order the file to be closed, in accordance with Article 35.c of its Regulations. Consequently, it is clear that in the processing of individual cases before the Commission, there is no concept of expiry of jurisdiction as an ipso jure measure merely because of the passage of time.

30. The IACHR must point out that the above argument of the State is incorrect, since the information of the petitioners was submitted in response to a request for updated information on the part of the IACHR. That request was sent to both parties on October 24, 1997.

31. In any case, upon examining the State=s objection, the IACHR is obliged to act within the terms of Article 29 of the American Convention, which provides as follows:

No provision of this Convention shall be interpreted as:

a. permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein.

32. Similarly, upon receiving the IACHR's request for information on the present case, the Mexican State is obliged to provide it, under the terms of Article 48.1 of the American Convention, "within a reasonable period of time, to be determined by the Commission in accordance with the circumstances of the case".[FN4] The IACHR concludes that the State's

arguments about the presumed closure of the case are groundless, and that therefore it remains under the obligation to provide the information requested by the IACHR.

[FN4] The IACHR has applied this same provision in other cases, noting that: The Convention, therefore, obliges states to furnish information requested by the Commission in the course of developing an individual case. Report No 28/96, case 11,297 (Guatemala), October 16, 1996, Annual Report of the IACHR, para. 40, page 413.

B. Exhaustion of domestic remedies

33. The States Parties to the American Convention must ensure the observation of the rights enshrined in that Convention, and must provide the internal legal mechanisms necessary to investigate deeds that violate those rights, to punish the guilty parties, and to compensate the victims.[FN5]

[FN5] In this respect, the Inter-American Court has ruled: The rule of prior exhaustion of domestic 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). Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, para. 61.

34. In the instant case, the State has claimed that the petition is inadmissible because the remedies available in the domestic jurisdiction were not exhausted. The Inter-American Court has established that when a State invokes failure to meet this condition of admissibility, it is incumbent upon the petitioner to prove that those remedies were exhausted, or that the exceptions contained in Article 46.2 of the American Convention should apply.[FN6]

[FN6] *Idem*, para. 60.

35. The Commission will refer in the first place to the impeachment proceedings that were brought on January 10, 1990, by members of the PRD against the Governor of the state of Guerrero, José Francisco Ruiz Massieu before the Chamber of Deputies of the Mexican Congress, and which were rejected by the Congress on March 10, 1990. It is clear that an initiative for impeachment proceedings brought three months prior to the occurrence of the events denounced cannot in any way be deemed to exhaust domestic remedies with respect to those events[FN7]. Moreover, the instruments of the inter-American system refer at all times to "Aremedies under domestic law" (articles 46.1 of the American Convention and 32.d of the

IACHR Rules of Procedure). Impeachment proceedings are a constitutional institution or a procedural privilege that applies to high-ranking public officials, brought before the Legislative Branch. Therefore, it is not a judicial remedy, and cannot be considered to be adequate for remedying the violations denounced in the present case. The IACHR therefore concludes that that action does not exhaust domestic remedies.

[FN7] The Inter-American Court of Human Rights has established, with respect to the remedies of internal jurisdiction, that:

Article 46(1)(a) of the Convention speaks of "generally recognized 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 forth in Article 46(2).

Adequate domestic remedies are those which are suitable to address an infringement of a legal right. A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance. If a remedy is not adequate in a specific case, it obviously need not be exhausted. A norm is meant to have an effect and should not be interpreted in such a way as to negate its effect or lead to a result that is manifestly absurd or unreasonable...

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

Idem, paras. 63, 64 and 66.

36. It has been established that the principal events that led to the petition before the IACHR occurred during the first months of 1990. As the petition was presented on April 3, 1990, it is at first sight difficult to sustain that, within a period of some two months, all the domestic remedies available for investigating those events, punishing the guilty parties and compensating the victims could have been exhausted.

37. Nevertheless, the petitioners allege that the arbitrary attitude of the government made those domestic remedies inaccessible or inoperative, and that it was particularly difficult to document their exhaustion. They claim furthermore that the concrete events underlying the petition to the IACHR were denounced in Mexico, but that the competent authorities arbitrarily dismissed them.

38. Article 37.2.c of the Commission's Regulations provide for an exception to the exhaustion of remedies rule, if "there has been unwarranted delay in rendering a final judgment under the aforementioned remedies". In this respect, the IACHR notes that most of the previous investigations and prosecutions that were undertaken in response to the petitioners' complaints were considered "partially fulfilled" in the respective actions of the Mexican National Human Rights Commission (CNDH). The petitioners claim that their representatives in Guerrero have been "repeatedly asking", without success, for information from the PGJ of that State about the investigations referred to.

39. It must be stated once again that the totality of the updated information on the status of the complaints and actions referring to the events denounced in Mexico under this case is what is

contained in the communication from the petitioners of January 20, 1998, and that the State has declined to submit its observations on that information.

40. The IACHR considers, therefore, that the instant case meets the requirements of the exception contained in Article 46.2.c of the American Convention, and of Article 37.2 of its Regulations.

C. Duplication of proceedings

41. Articles 46.1.c of the American Convention and 39.1 of the Commission's Regulations, provide as a requirement for admissibility that the subject of the petition or communication is not pending in another international proceeding for settlement. As reported by the petitioners, there was an express request made to the Secretary General of the United Nations, asking him to consider the complaint they had brought before that organization as part of the review of the general human rights situation in Mexico. The State itself reported subsequently that the complaint before the UN Human Rights Commission had been closed.

42. The provisions mentioned in the previous paragraph are complemented by Article 39.2 of the IACHR's Regulations, which states:

The Commission shall not refrain from taking up and examining a petition in cases provided for in paragraph 1 when: a. the procedure followed before the other organization or agency is one limited to an examination of the general situation of human rights in the state in question and there has been no decision on the specific facts that are the subject of the petition submitted to the Commission, or is one that will not lead to an effective settlement of the violation denounced.

43. The IACHR considers that the procedure in question must be equivalent to that set forth for the processing of individual petitions in the inter-American system. It is not the case of the Human Rights Commission of the U.N., whose nature does not include jurisdictional functions such as those of the IACHR. Consequently, it is clear that there are no grounds for invoking duplication of proceedings in the instant case.

D. Other considerations

44. With respect to the other allegations in the complaint, the IACHR notes that in some cases they refer to general situations, for which there has not been sufficient information provided as to the identity of the victims, the remedies sought and their exhaustion. In other cases, it is unclear whether the events constitute a possible violation of any of the rights protected by the American Convention. Therefore the IACHR lacks competence to examine and decide on those aspects of the petition.

VI. CONCLUSIONS

45. The allegations described in the present report, which are set out in paragraph 22 above, describe colorable claims of violations of rights protected under the American Convention,

which the Commission shall adjudicate in the course of the proceedings. On the basis of its analysis, the IACHR concludes that those allegations meet the requirements for admissibility.

46. As a reflection of its interest in juridical security, the Commission will focus its considerations and its decision on the merits of the case surrounding the allegations cited. To assist it in arriving at a decision, the IACHR deems it important to have the position of the State with respect to the petitioners' last communication, noting that it may otherwise have to resort to the powers conferred on it by Article 42 of its Regulations.

47. With respect to the other allegations that were cited in the petitioners' initial complaint, and those that were added subsequently, the Commission considers that they do not meet the conditions of admissibility as set forth in the American Convention, and it therefore concludes that they are inadmissible.

48. On the basis of the arguments of fact and of law as set out above,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the petition admissible as to the allegations described in paragraph 22 above, and to continue its analysis of the substance of the complaint relating to those allegations.
2. To declare the petition inadmissible with respect to the other allegations made by the petitioners in this case.
3. To repeat to the Mexican State its request for information on the case, that was made on February 4, 1998.
4. To transmit this report to the petitioners and to the Mexican State.
5. To place itself at the disposal of the parties with a view to reaching a friendly settlement of the matter, consistent with the terms of Article 48.1.f of the American Convention, and to request the parties to communicate their decision in this regard to the IACHR within 30 days after the date on which this report is transmitted.
6. To publish this report and to include it in the Commission's Annual report to the OAS General Assembly.

Approved by the Inter-American Commission on Human Rights (IACHR), in the city of Caracas, Venezuela on the 5th day of the month of may 1998. (Signed): Carlos Ayala Corao, Chairman; Robert K. Goldman, Vice Chairman; Jean Joseph Exume, Second Vice Chairman; Commissioners Alvaro Tirado Mejia, Claudio Grossman and Helio Bicudo