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Title/Style of Cause: Loren Laroye Riebe Star v. Mexico
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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: Riebe Star v. Mexico, Case 11.610, Inter-Am. C.H.R., Report No. 34/98,
OEA/Ser.L/V/II.102, doc. 6 rev. (1998)
Represented by: APPLICANTS: Robert W. Benson and other lawyers
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1. On March 4, 1996, the Inter-American Commission on Human Rights (hereafter "the Commission" or "the IACHR") received a complaint submitted by Robert W. Benson and other lawyers (hereafter "the petitioners") on behalf of Loren Laroye Riebe Star, a Catholic priest and U.S. citizen, and the beneficiaries of six education, economic and charity projects in the State of Chiapas, Mexico. The petition alleged violation by Mexico (hereafter "the State", "the Mexican State" or "Mexico") of the following rights enshrined in the American Convention on Human Rights (hereafter the "American Convention"): the right to personal integrity (Article 5), the right to personal liberty (Article 7), the right to judicial guarantees (Article 8), the right to protection of a person's honor and dignity (Article 11), the right to freedom of conscience and religion (Article 13), the right of assembly (Article 15), freedom of association (Article 16), to right to property (Article 21), the right to freedom of movement and residence (Article 22), and the right to judicial protection (Article 25).

2. The petition was subsequently expanded by the University Workshop on Human Rights and the Center for Justice and International Law (hereafter "TUDH" and "CEJIL" respectively, or in general "the petitioners"), alleging almost identical violations of the rights of other foreign Catholic priests in the diocese of San Cristóbal de las Casas, Chiapas: the Rev. Jorge Alberto Barón Guttlein, an Argentine citizen; and the Rev. Rodolfo Izal Elorz, a Spanish citizen.

I. EVENTS ALLEGED

3. The petition relates that, on the afternoon of June 22 in 1995, the Rev. Riebe was enticed out of his office under a false pretext and was thereupon arrested at gun-point by police officers. The police, who refused to identify themselves and had no arrest warrant, took Rev. Riebe to the headquarters of the State Judicial Police in the city of Tuxtla Gutiérrez, the capital of the state of

Chiapas. There he was stripped of his clothing and subjected to a medical examination. He was not allowed to attend to his bodily needs for several hours, and was never informed of the reasons for his arrest. Subsequently, Rev. Riebe was taken to the airport of Tuxtla Gutiérrez.

4. The amplification of the petition concerning the Rev. Barón Guttlein claims that, on June 22, 1995, while the priest was traveling in his car, he was forced by a van to pull off the road at El Carmelito, Chiapas. Four men emerged from that van and, without any warrant or official identification of any kind, made him get out of his car. They blindfolded his eyes and covered his face with a jacket. Under these conditions he was forced to lie on the floor of the van, and his captors drove him for three hours to a place where they removed the blindfold, and he realized that he was in Tuxtla Gutiérrez. The unidentified individuals who were holding him forced him to strip, and to allow another person, also unidentified, to perform a medical examination. Thereafter, they took him to the city's airport.

5. With respect to the Rev. Izal Elorz, the amplification of the petition claims that on June 22, 1995, he was driving in his own car when he was intercepted by several armed individuals who refused to identify themselves. The priest was forced from his vehicle by these individuals, who shoved him into the cabin of a van. They then drove off with him in an unknown direction, surrounded by two armed men watching over him. The complaint goes on to relate that, upon arrival at Tuxtla Gutiérrez, the priest was taken to the headquarters of the Chiapas Judicial Police, where they stripped him in front of his captors to see whether he had suffered any injuries from them. The petitioners also complain that Rev. Izal Elorz was subjected to an exhausting interrogation, which in fact consisted of a series of direct allegations of supposedly illegal acts committed by him. At no time was he permitted the services of a lawyer. Subsequently he was taken to the city's airport.

6. The three priests, who had been taken to the airport of Tuxtla Gutiérrez, were then flown in a government aircraft to the airport of Mexico City, where they were subjected to a political interrogation by Mexican immigration authorities. At this time, representatives of the Embassies of the United States, Spain and Argentina were present, in addition to a lawyer of the National Human Rights Commission (CNDH). Nonetheless, the petitioners claim that these persons were not allowed to attend or participate in the questioning of the priests, which dealt with questions of political parties, indigenous political groups, the Ejército Zapatista de Liberación Nacional (EZLN) and land seizures.

7. The petition indicates as well that the Mexican authorities involved in these proceedings told the priests that they had no right to the assistance of a lawyer, or to be informed of the charges against them, to know the evidence against them or the names of the persons accusing them, nor were they entitled to any kind of defense. Finally, the authorities announced that the three priests were to be expelled "for activities not compatible with their immigration status".

8. The three priests were escorted by six immigration officers, and placed on a flight of American Airlines, which took off at 08:40 a.m. on June 23 1995, bound for Miami, USA. In that city, they received a message from the Ministry of the Interior [Secretaría de Gobernación] of Mexico, informing them of the reasons why they were deported, and the allegations made against them by the Mexican immigration authorities. The orders for their arrest and expulsion,

according to the report, were revealed to the priests only after they were outside Mexican territory, although those orders bore the date of June 21, 1995.

II. PROCEEDINGS BEFORE THE COMMISSION

9. On April 16, 1996, the Commission requested information from the State, and assigned case number 11,610 to the petition. The State responded on July 17, 1996, asking that the petition be declared inadmissible in light of Articles 46 and 47 of the American Convention; the IACHR forwarded that response to the petitioners.

10. The petitioners submitted their observations to the State's response, which had been transmitted to them by the IACHR, by letter dated September 14, 1996; this letter was transmitted to the State by the Commission. The information requested was provided by the State on November 7, 1996.

11. On July 29, 1997, the IACHR received two communications from the TUDH, reiterating the same alleged violations referred to in this case, and including Rev. Barón Guttlein as a victim of those violations. The IACHR included this information in the records of the case, and added the TUDH and CEJIL, as petitioners.

12. On August 18, 1997, the TUDH submitted a petition concerning the Rev. Izal Elorz. Pursuant to Article 40.2 of its Regulations, the IACHR decided to add the complaints concerning the Rev. Barón Guttlein and the Rev. Izal Elorz to the present case. The pertinent parts of the petition with respect to the former were transmitted to the State on August 25, 1997; and with respect to the latter, on November 18, 1997.

13. The State responded to the petitions regarding the Rev. Izal Elorz on September 23, 1997, and the petitioners submitted their observations on that response on November 3, 1997.

14. The expansion of the petition concerning the Rev. Barón Guttlein was contested by the State on December 9, 1997, and the relevant observations of the petitioners were received on January 26, 1998. The State stated its position on those observations in its communication of February 27, 1998.

15. During its 97th session, the Commission held a hearing on the present case, at which the Rev. Riebe and representatives of the petitioners and of the Mexican State appeared.

IV. JURISDICTION

16. The IACHR has prima facie jurisdiction to hear the present case, because it relates to alleged violations of rights recognized and protected in the American Convention. The deeds denounced took place when the obligation to respect to and to guarantee the rights established in that Convention was fully in force in Mexico.

V. ADMISSIBILITY

17. 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.[FN1] 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 present complaint.

[FN1] See, *inter alia*, Report N° 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 N° 49/97 (Case 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. Exhaustion of domestic remedies

18. The States Parties to the American Convention must in principle 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.[FN2]

[FN2] In this respect, the Inter-American Court of Human Rights has ruled: The rule of prior exhaustion of domestic remedies allows the State to resolve the problem according to its internal laws before it is faced with an international proceeding, a principle that is particularly valid when it comes to international protection for human rights, because it reinforces or complements the protection provided under domestic law (American Convention, Preamble). Inter-American Court of Human Rights, Velásquez Rodríguez case, Judgment of July 29, 1988, para. 61.

19. In the present case, the State has claimed that the petition is inadmissible because the remedies available under 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.[FN3]

[FN3] *Idem*, para. 60.

20. According to the petitioners, the preliminary investigation that was undertaken concerning the three priests is identified as No. 9883/DGM/95. Their representatives in Mexico brought a motion for indirect protection [*amparo indirecto*] of the allegedly violated rights of each of the priests, on July 14, 1995. In all three cases, the federal district court rejected the motions, without examining the merits of the claims.

21. The representatives of the Revs. Riebe, Barón Guttlein and Izal Elorz brought an appeal for review against that rejection. The circuit court decided to overturn the earlier decision, and ordered the district court judge to admit the motion and to continue the proceedings. The ruling of that circuit court, on July 9, 1996, denied the protection of federal justice; the representatives of the priests brought an appeal for review of that ruling, which was decided by the circuit court with the effect of confirming the challenged ruling. Notification of this decision was given to the legal representatives of the priests on January 30, 1997. The petitioners claim that that court ruling exhausted domestic remedies, since there is no other superior court in Mexico to which an appeal could be presented, in order to revoke a ruling denying a motion of amparo.

22. The position of the State on the matter was amended when it responded, on September 23, 1997, to the expansion of the complaint to include the deeds relating to the Rev. Izal Elorz. In effect, the Mexican State made no further mention of the requirement for the exhaustion of domestic remedies, and restricted its arguments to claiming to aspects relating to the merits of the case, arguing that there had been no violations of the American Convention. This is clear from the State's response of December 9, 1997, with respect to the Rev. Barón Guttlein. It should be noted that on both occasions, there had already been a definitive ruling on the three motions of amparo.

23. The IACHR considers that there is no dispute that the recourse of amparo is the most suitable remedy available in Mexico for rectifying the alleged violations. Nor does the State dispute the assertion of the petitioners that the ruling of the circuit court, confirming the rejection of amparo in the cases of the three priests, exhausted the remedies of domestic jurisdiction. Consequently, the Commission considers that the present complaint meets the requirements of admissibility set forth in Article 46 of the American Convention.

B. Friendly settlement

24. In a hearing held on the case, the IACHR placed itself at the disposal of the parties with a view to initiating a procedure for friendly settlement, and set a time limit of 30 days for them to state their positions. The State replied on March 24, 1998, saying that it could not accept the proposal for a friendly settlement of the case, if the petitioners intended to return to Mexico, since that question was not negotiable as far as the country's authorities were concerned. For their part, the petitioners replied on March 25, 1998, stating that they would agree to submit to the proposed procedure, but only on condition that the State guarantee the safe return of the priests to Mexico, under an immigration status appropriate to their religious work.

25. Since the condition requested by the petitioners to enter the friendly settlement procedure was not met, the Commission considers that that procedural stage is not viable, and therefore it shall proceed to the merits.

VI. CONCLUSIONS

26. On the basis of its analysis, the IACHR concludes that the present case fulfills the requirements for admissibility as set out in Article 46 of the American Convention. As to Article

47.b, the IACHR concludes that it does not apply to this case, since the facts described tend to establish a colorable claim for a violation of rights protected under the American Convention. The Commission therefore has jurisdiction to hear and decide the substance of the complaint.

27. Bearing in mind the arguments of fact and of law set forth above,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the petition admissible.
2. To transmit this report to the petitioners and to the Mexican State
3. To continue its analysis of the merits of the petition.
4. To publish this report and to include it in the Annual Report of the Commission to the OAS General Assembly.

Approved by the Inter-American Commission on Human Rights (IACHR), in the city of Washington, D.C. 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.