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Title/Style of Cause:	Anselmo Rios Aguilar 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.
Dated:	5 May 1998
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1. On June 29, 1994, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") received a petition presented by Anselmo Ríos Aguilar (hereinafter "the petitioner" or "Mr. Ríos Aguilar"), alleging events that would constitute a violation by the United Mexican States (hereinafter "the State", "the Mexican State", or "Mexico") of the following rights enshrined in the American Convention on Human Rights (hereinafter "the American Convention"): the right to due process (Article 8); the right to property (Article 21); and the right to judicial protection (Article 25).

## I. EVENTS ALLEGED

2. In a decree issued on March 19, 1987, the governor of the State of Mexico ordered the expropriation of real estate belonging to Mr. Ríos Aguilar, for public purposes, on behalf of the Municipality of Melchor Ocampo. The petitioner filed an appeal requesting the reversal of that decree (hereinafter "the first decree of expropriation") with the governor of the State, who pronounced it inadmissible. In response to that decision, the petitioner filed a complaint with the Administrative Dispute Resolution Court of the State of Mexico, requesting the reversal of the first decree of expropriation; that request was pronounced inadmissible.

3. To challenge that decision, the petitioner filed a lawsuit based on guarantees with the Second Appellate Court of the Second Circuit (hereinafter the "appellate court"), which granted him the federal protection he requested. Subsequently, that court issued a new decision, declaring the final decision of the summary proceedings to guarantee constitutional rights to be flawed. Mr. Ríos Aguilar then filed a complaint with that court, which was declared admissible.

4. The appellate court resolved the complaint by revoking the judgment of the Regional Court. In so doing, it declared the appeal requesting the reversal of the first decree of

expropriation filed by the petitioner with the Governor of the State of Mexico to be admissible and thereby nullified the decree. In addition, it instructed the authorities to restore full possession of the property to the petitioner. The court restored the guarantees of legality and ownership to Mr. Ríos Aguilar, but failed to reinstate the guarantee of possession.

5. The governor of the State of Mexico informed the Third Regional Chamber of the State's Administrative Dispute Resolution Court that the contested decree of expropriation had been rescinded, but that it continued to own the real estate, based on the decree of October 15, 1990 (hereinafter "the second decree of expropriation"). The second decree of expropriation states that "...the decree of expropriation by the State executive branch is considered nullified...at the same time, it is hereby expropriated, given the need to preserve the operation of the school built on it". The Division Court ruled on October 16, 1990, that the judgment handed down by the higher court had been executed by the authorities against whom the suit had been presented.

6. Mr. Ríos Aguilar disagreed with the way in which the sentence of the higher court was considered to have been executed and filed an appeal to reverse the ruling of October 16, 1990. The High Chamber of the Administrative Dispute Resolution Court of the State of Mexico declared that appeal inadmissible and confirmed the decision of the lower court, declaring the judgment to have been executed.

7. The petitioner then filed a complaint with the appellate court, claiming a flaw in execution of the amparo judgment; that appeal was declared inadmissible on June 27, 1991. Subsequently, Mr. Ríos Aguilar instituted proceedings before that court against the governor of the State of Mexico and the Municipal Government of Melchor Ocampo for failing to execute the judgment of amparo.

8. The appellate court apprised the Governor and the Municipal Government of these proceedings, to which the petitioner took exception, which the petitioner was not in agreement with, since he felt that the authorities should be required to report specifically on restoration of the guarantee of possession. Mr. Ríos Aguilar therefore filed an appeal with the appellate court for a reversal of the decision. The appeal was resolved on September 19, 1991, with a decision that his request was without merit.

9. On October 15, 1991, the appellate court decided to reject the plea filed by Mr. Ríos Aguilar concerning the failure to execute the judgment of the amparo. That decision was based on the premise that he should have filed a lawsuit on guarantees against the second decree of expropriation, since the dispossession of the real estate belonging to him had been based on the second decree of expropriation, not on the judgment of amparo. On October 23, 1991, the petitioner requested that the court submit file No. 24/90 on the amparo proceedings to the Supreme Court of Justice of Mexico. On October 28, 1998 the court rejected his petition, stating that it had been rejected on the grounds of form and procedure, not because the final judgment of amparo was considered to have been executed.

10. Mr. Ríos Aguilar indicates that he did not lodge an appeal against the second decree of expropriation, because-inasmuch as the final judgment of amparo issued in his favor had not yet been carried out in its entirety, restoring his ownership of the real estate, the Governor of the

State of Mexico could not duly issue a new and legally binding decree of expropriation. The petitioner feels that if such behavior were deemed admissible, any authority could issue new and innumerable administrative acts before complying with a final judgment of amparo, thus making a mockery of the federal justice system.

11. Finally, on December 13, 1991, the petitioner filed an application for internal review with the Supreme Court of Justice of Mexico, requesting that it intervene in the case and order suitable measures to be taken to ensure compliance with the judgment of amparo issued on February 14, 1990. That application still had not been resolved when the petitioner turned to the IACHR for assistance.

## II. PROCEEDINGS BEFORE THE COMMISSION

12. On June 29, 1995 the Commission requested information from the Mexican State on the events cited in the petition; and Mexico responded on September 28, 1995.

13. On November 6, 1995, the petitioner presented his observations concerning Mexico's response. Following an extension, on February 20, 1996 the State submitted its final comments on the case. On February 28, 1996, additional information was received from the petitioner.

## III. POSITION OF THE PARTIES

### A. The petitioner

14. The petitioner maintains that, despite all the administrative and legal appeals filed and with the firm judgment in his favor from the final judgement of amparo, he has still not been able to regain possession of the property he owns that was expropriated.

15. As to the request submitted to Supreme Court of Justice of Mexico, the petitioner notes that it is a proper and effective appeal, provided for in the laws of Mexico; and that, accordingly, the requirements in Article 46(1)(b) of the American Convention are not applicable to his case. Furthermore, due to the excessive delay in resolving that request, Mr. Ríos Aguilar is invoking the exception cited in Article 46(2)(c) of the Convention.

### B. The State

16. The State of Mexico asserts that the petition does not claim the violation of rights set forth in the American Convention, and should therefore be declared inadmissible, as provided in Article 47(b) of that instrument.

17. In addition, the State argues that the petition is inadmissible, because it was presented more than six months after October 15, 1991, the date on which the appellate court resolved the proceedings instituted by Mr. Ríos Aguilar on the failure to execute the judgment. The State points out that the aforementioned judgment constituted the final decision; and that following notification thereof, a deadline of six months is provided for in Article 46(1)(b) of the American

Convention. The State adds that the decision of that court was not nullified by the request for internal review which Mr. Ríos submitted to the Mexico's Supreme Court.

18. Finally, the State claims that Mr. Ríos Aguilar had not exercised timely recourse to the appropriate procedures, since he failed to challenge the second decree of expropriation.

#### IV. JURISDICTION

19. In this case, the petitioner makes claims on rights that are protected by the American Convention. The events challenged would have occurred when the obligation to respect and guarantee the rights set forth in the American Convention was already in effect in Mexico.[FN1]

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[FN1] Mexico ratified the American Convention on April 3, 1982.

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#### V. ADMISSIBILITY

20. The State has a legal obligation to provide suitable and effective domestic remedies for the reparation of human rights violations. In return, the alleged victim has the obligation to exhaust domestic jurisdiction--except in applicable exceptions--by presenting appropriate appeals to resolve the alleged violation.

##### A. The six-month deadline

21. In the proceedings of this case, the State has affirmed the inadmissibility of the petition, because the requirement set forth in Article 46(1)(b) of the American Convention had not yet been met, and because it considers that the events in question do not violate any of the rights protected by the American Convention. The Commission will examine the first of the aforementioned questions of law.

22. With regard to the deadline in Article 46(1)(b), the Inter-American Court has held that:

. . . since that period depends on the exhaustion of domestic remedies, it is for the Government to demonstrate to the Commission that the period has indeed expired.[FN2]

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[FN2] Inter-American Court of Human Rights, Case of Neira Alegría et al., Preliminary Exceptions, Judgment of December 11, 1991, paragraph 30. Regarding the deadline, also see Mónica Pinto, *La denuncia ante la Comisión Interamericana de Derechos Humanos* (Claims before the Inter-American Commission on Human Rights), Editores del Puerto S.R.L., Buenos Aires, September 1993, pp. 71-76.

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23. The State claims that the accusation was presented more than six months after the date when the final judgment of the domestic jurisdiction was issued. It further claims that the

decision was not nullified by the request that the petitioner presented to the Supreme Court of Justice on December 13, 1991.

24. Before deciding on the applicability of Article 46(1)(b) to this case, the Commission must determine whether or not the request made by Mr. Ríos Aguilar to the Supreme Court of Justice was a suitable and effective recourse, which he had to exhaust before turning to the inter-American body.[FN3]

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[FN3] The European Commission of Human Rights, upon examining Article 26 of the European Convention on Human Rights, which sets a similar deadline to that in Article 46(1) of the American Convention, established the following:

The Commission recalls that it has the competence in every case to appreciate, in the light of the particular facts, whether any given remedy appears in a given case to offer the possibility of effective and sufficient redress, within the meaning of the generally recognized rules of international law in regard to the exhaustion of domestic remedies and, if not, to exclude it from consideration in applying the six months time-limit.

The European Commission of Human Rights, Decisions and Reports, No. 35, Request No. 10326/83, Decision of October 6, 1983, page 220.

To that same end, another decision of the European Commission is worthy of mention. In that decision, it declared inadmissible an accusation against Ireland, also based on Article 26 of the European Convention of Human Rights. In that case, the European Commission examined the request made by the petitioner to the Attorney General for authorization to appeal to the Supreme Court and found that it was not an effective recourse under the principles recognized by international law. In arriving at that conclusion, the Commission took into account that the possibility of obtaining such authorization was not a right, but rather was up to the discretion of the Attorney General and that:

...[the appeal to the Supreme Court] is not a remedy which is part of the ordinary hierarchy of judicial decisions which a person complaining of his trial, conviction and sentence would normally be obliged to pursue.

Consequently the Attorney General's decision to refuse a Section 29 Certificate cannot be taken into consideration in determining the date of the final decision for the purpose of applying the six months' time-limit laid down in Article 26.

European Commission of Human Rights, Decisions and Reports, No. 26, Request No. 9136/80, Decision of July 10, 1981, page 244.  
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B. Suitability of the Appeal to the Supreme Court of Justice

25. With regard to the application for internal review filed by Mr. Ríos Aguilar, Article 97 of the Mexican Constitution establishes the following:

. . . The Supreme Court of the Nation may appoint one or more of its members, when deemed advisable, or if the federal Executive, one of the chambers of Congress, or the governor of a state so requests, solely to investigate the conduct of any federal judge or magistrate or any act or acts which may constitute a violation of any individual guarantee.

. . . The results of the investigation shall be promptly forwarded to the competent organs.

26. The Supreme Court of Justice of Mexico, when interpreting that article, expressed the following:

Article 97 of the Constitution grants the Supreme Court of Justice the authority to investigate any event or events that are a violation of some individual guarantee or the violation of the public election or any offense punishable under federal law exclusively when the Court deems it proper or when asked to do so by the federal Executive, one of the chambers of Congress, or the governor of a State. When none of the aforementioned officials or authorities requests an investigation, an investigation is not obligatory, but rather it is up to the discretion of the Court to resolve in the way it deems most fit to maintain public peace. In no case are individuals competent to request an investigation by the Supreme Court; only the Court can use authority of such importance.[FN4]

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[FN4] Thesis 112/75 of the Supreme Court of Justice, quoted in Ignacio Burgoa, *Derecho Constitucional Mexicano (Mexican Constitutional Law)*, Tenth Edition, Editorial Porrúa, S.A., Mexico, 1996, page 845.

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27. The Mexican author Héctor Fix-Zamudio, when referring to that constitutional provision, explains that the doctrine allows for a "simple procedure and not a true process." This is because it deals exclusively with violations of the constitution and is therefore not applicable to simple questions of legality. The clearing up of criminal matters is the responsibility of the Office of the Attorney General.[FN5]

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[FN5] Héctor Fix-Zamudio, *Introducción al estudio de la defensa de la Constitución en el ordenamiento mexicano (Introduction to the Study of the Defense of the Constitution in the Mexican System)*, Universidad Nacional Autónoma de México, 1994, page 56.

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28. The Mexican constitutional expert, Ignacio Burgoa, refers to the above-mentioned provision in the following terms:

...the intervention of the Supreme Court in the investigation of events that is referred to in the third and fourth paragraphs of Article 97 of the Constitution can be explained solely from a moral or ethical, political standpoint...

...in short, the simple investigation of violations of individual guarantees or of the public election, without the Supreme Court being able to make a decision on the results it obtains, at most, involves nothing more than mere moral conduct that may or may not have an influence on the intentions of the authorities competent to issue the appropriate compulsory resolutions.[FN6]

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[FN6] Ignacio Burgoa, *op.cit.*, pp. 842 and 844, respectively.

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29. The Commission notes that the above-mentioned constitutional provision does not grant a specific individual the right to request that the Supreme Court of Justice of Mexico launch an investigation on violations of individual guarantees.

30. In the hypothesis most favorable to the petitioner, his request could lead the Supreme Court of Justice of Mexico to issue a recommendation that the other authorities pursue and punish those responsible for the presumed violations of constitutional guarantees. As a result, that request could not result in proceedings that would reestablish the legal status that was allegedly infringed by returning possession of the expropriated real estate to Mr. Ríos.

31. For the above reasons, the Commission concludes that the request for an internal investigation made by Mr. Ríos Aguilar to the Supreme Court of Justice of Mexico on December 13, 1991 is clearly inappropriate for the legal status infringed upon. The Commission further concludes that the initiative was not a jurisdictional recourse in the sense of Article 46(1).a of the American Convention.

32. Consequently, that request did not extend the initial six-month deadline outlined in Article 46(1)(b) of the American Convention and Article 38 of the Regulations of the IACHR, a period which should start as of the final judgment of October 15, 1991.

## VI. CONCLUSION

33. The Commission concludes that the petition in question, presented to the Commission on June 29, 1994, is inadmissible under Article 46(1)(b) of the American Convention, because it was not presented before the deadline elapsed.

34. Accordingly,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant case inadmissible.
2. To transmit this report to the petitioner and to the State of Mexico:
3. To make this report public and to include it in the Commission's annual report to the General Assembly of the Organization of American States.

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, and Claudio Grossman.