

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 24/99; Case 11.812
Session: Hundred and Second Regular Session (22 February – 12 March 1999)
Title/Style of Cause: Gabriel Lastra Pedrero and Adela Ortiz Catala v. Mexico
Doc. Type: Decision
Decided by: Chairman: Professor Robert K. Goldman;
First Vice-Chairman: Dr. Helio Bicudo;
Second-Vice Chairman: Dean Claudio Grossman;
Commissioners: Prof. Carlos Ayala Corao, Dr. Alvaro Tirado Mejia.
Dated: 9 March 1999
Citation: Lastra Pedrero v. Mexico, Report No. 24/99, Case 11.812, Inter-Am. C.H.R.,
Report No. 24/99, OEA/Ser.L/V/II.106, doc. 6 rev. (1999)

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I. SUMMARY

1. On March 17, 1997, the Inter-American Commission on Human Rights (hereinafter "the IACHR" or "the Commission") received a petition lodged by Gabriel Lastra Pedrero and Adela Ortiz Catalá (hereinafter, the petitioners"), against the United Mexican States (hereinafter "the State" or "the Mexican State"), according to which a property of theirs in Chiapas, Mexico was invaded by persons unknown--allegedly members of the Zapatista National Liberation Army (hereinafter "the EZLN")--who are purported to have destroyed property and stolen some 200 head of cattle. The complaint against the State refers to the failure to punish those responsible, a situation which, according to the petitioners, is due to the fact that such an act could affect the peace talks between the State and the EZLN. Although the petitioners make no specific reference to the rights they consider violated by the State, the Commission finds that the pleadings describe alleged infringements on the following rights protected by the American Convention on Human Rights (hereinafter "the American Convention"): to a fair trial (Article 8), to property (Article 21), and to judicial protection (Article 25).

2. The petitioners claim that the invasion that originated the complaint was carried out by 110 persons on January 16, 1995 and took place on a rural property known as "Barrancas Bermejas"; that they denounced the act before the authorities the following day; and that, in spite of numerous procedures, to date the invaders have not been caught. The petitioners request that the IACHR intercede before the State in order that the authorities catch the invaders and provide compensation to the petitioners for the damage to their property. For its part, the State alleges that the invaded lands have been recovered and that the authorities investigated diligently but were unable to catch the persons guilty of the theft and of the property damage. The State maintains that the remedies under domestic law have not been exhausted and that the events

described do not constitute a violation of any of the human rights enshrined in the American Convention, for which reason it requests the petition be declared inadmissible.

3. In the instant report, the Commission analyzes the available information in light of the American Convention and concludes that the petitioners have not exhausted the remedies under domestic law, further finding that the exceptions provided for in Article 46(2) of that international instrument do not apply. Consequently, the Commission decides that the case is inadmissible under Article 47(a) of the American Convention, forwards the instant report to the parties, makes it public, and orders its publication in the IACHR Annual Report.

II. PROCEEDINGS BEFORE THE COMMISSION

4. On March 13, 1997 the Commission requested the State to inform on the events alleged by the petitioners. The petitioners made observations to the State's response and information was subsequently obtained from both parties until the procedure provided for in Article 48 of the American Convention was completed.

III. POSITIONS OF THE PARTIES

A. The petitioners

5. The petitioners allege that on January 16, 1995, their lands were invaded by 110 persons "who referred to themselves as followers of lieutenant commander [subcomandante] Marcos." The petitioners claim that more than 2,600 animal found on the estate have been stolen from them and that their properties have been damaged, given that wire fences were stolen, tiles removed from the houses, and timber felled. They also explained their position with a lending bank, where the product of the loan was a livestock enterprise that was "massacred by the group of invading criminals".

6. Despite lodging the respective petition with the authorities, by virtue of which an arrest warrant was issued for "a group of certain people" on May 29, 1995, the petitioners affirm that nobody has been detained. The petitioners add that despite having instituted several proceedings before various state bodies of the State of Chiapas, they have not managed to achieve a positive outcome. They claim that "the aforesaid authorities argue that the invaders cannot be offended because talks are underway with the guerrillas" and if they were to arrest the accused the talks would break down. However, the petitioners allege that the accused have no links to the guerrillas and that the property is not inside the conflict area. The petitioners also say that they have also brought actions relating to robbery and threats, without any solution having been reached.

7. The petitioners also provided a valuation of the animals they claim to have been stolen, as well as the lending bank's refusal of a request to forgive the bank loans that the petitioners are unable to cover. The petitioners state that the Office of the Public Prosecutor of Chiapas has not acted with due diligence, since it only requested the cooperation of the authorities of the States of Veracruz and Tabasco in apprehending the accused parties two years and three months after the acts were committed.

8. Moreover, the places of residence of the accused have been fully identified and the invaded property is situated 15 kilometers from the investigations office of the State Attorney-General's Office, and an office of the judiciary police of Chiapas, these being the authorities in charge of carrying out criminal investigations. The petitioners claim that the invaders continued to steal animals and also that they dismantled all the installations located on the aforementioned property. The petitioners deny having asked the invaders to pledge not to invade again. They allege having gone before all the government offices in Mexico to seek justice, and that everywhere "the doors have been closed" to them.

9. The petitioners maintain that

as for the argument of the Mexican government, that we have not offered and proof that tends to establish any violation of human rights by government apparatuses, this is proved by the mere fact that 31 months after the facts were requested it has not been possible to impart justice.

Whichever way one looks at it the conduct of the Chiapas authorities is in violation of human rights and constitutes a clear denial of justice deriving from the discriminatory attitude toward Tabasco residents like ourselves who pursue procedures before them.

10. The petitioners add that the coordinator for agricultural matters in Chiapas argues that it is not possible to make payment because this is not a problem of an agricultural nature. The petitioners state that when the invaders spread into other lands they owned, they stole 500 animals from them and that when they entered 305 animals in the books there were in fact 450, and that the person who looks after the estate, and who was compelled with threats against his family to sign, is not empowered legally to sign for or represent them since he is only the estate caretaker. The petitioners indicate to the Commission that the valuation performed by the authorities is incorrect and that it is prejudicial to their interests. The petitioners also contend that a justice of the peace is not competent to take cognizance of the illegal acts committed to their detriment because the laws are unfit for the instant case.

11. The petitioners state that they have exhausted domestic remedies and that they have even complained to the President of the Republic. They also say that on several occasions they went before the Internal Comptroller's Office in the Office of the Public Prosecutor of Chiapas and before the Governor of Chiapas, to inform about anomalies on the part of agents of the State Attorney-General's Office that dealt with them; they also informed about the three government prosecutors who have handled the case and who were unaware of the conciliation proposal put forward by the National Human Rights Commission.

12. The petitioners allege the responsibility of the State in "tolerating a group of criminals who with impunity and the forbearance of the aforesaid authorities committed countless crimes against us and other persons, without the law being enforced on them for that reason. On being informed of the crime they did not act but tacitly supported these criminals." The petitioners requests that the IACHR "appoint a Commission" to conduct an on-site investigation of the statements made.

B. The State

13. The State maintains that in the instant case "the Judiciary Police of the State of Chiapas undertook the search and arrest of the accused, finding as a result of their investigations that the latter are spread through the States of Veracruz and Tabasco", for which reason they have requested the cooperation of the relevant authorities of the aforesaid states. The State also declares that a petition for the alleged infringements on the victim is being processed before the National Human Rights Commission and that said petition is in "being consolidated".

14. The State reports that in February 1996 Mr. Lastra Pedrero met with the representatives of the invaders "with the purpose of establishing the location of the property and performing a valuation, the proprietor being permitted to make use of all the installations on the property, and to ascertain the whereabouts of the livestock and chattels". Furthermore, the State alleges that "on December 17, 1996, representatives of the Government, the State, and of the Office of the Agricultural Prosecutor [Procuraduría Agraria], met with Mr. Lastra in order to make physical delivery of the properties into his possession, which he did not accept, since he wanted the invaders to pledge never again to invade his properties".

15. According to the State, as stated in a report by the Regional Delegate of the Secretariat of the Government of the State of Chiapas, dated April 1, 1997 and with reference number SG/DRZC/09/97, Mr. Lastra is again in possession of the property. The report alleges that the Agrarian Reform Secretariat informed that the property "Barrancas Bermejas" is not invaded. The report also states that "with respect to compensatory damages, no record was found of any claim lodged by Mr. Lastra with that Office of the Federal Executive".

16. The State claims that domestic remedies have not been exhausted, since the "competent authority completed the preliminary investigation and referred the case to the jurisdictional organ, which issued the respective arrest warrants. Unfortunately the institutions responsible for prosecution of justice have not managed to apprehend the persons allegedly guilty of the various aforementioned crimes, due to the fact that they have been placed beyond the reach of the judicial authorities". In the opinion of the State, the Office of the Public Prosecutor of Chiapas "has demonstrated its political desire and intention to perform its constitutional duty to prosecute crime," and that the aforesaid institution has not denied Mr. Lastra exercise of his right to administration of justice. However, investigation of these events has proved difficult. The investigations have been conducted "according to law and with the speed the law demands." The State notes that a petition is still pending settlement before the National Human Rights Commission where the respective investigation is being carried out.

17. Furthermore, the State holds that the petitioners have not instituted any compensation proceedings for alleged damages before Agrarian Reform Secretariat; and that such a proceeding is suitable and accessible to the petitioners. The State alleges that "there is no evidence in the petition to show either the participation of government officials in the events denounced, or the very materiality of the alleged violation of the precepts of the American Convention on Human Rights". The State further says that the petitioner's right to a fair trial and to judicial protection have not been impaired, that the matter was acted on with due diligence, that the property is not invaded, and that the victim has recovered his properties.

18. The State considers that the preoccupation of the petitioners primarily refers to the amount of the valuation and that the arguments relating to the Chiapas conflict and the alleged attitude assumed by certain local officials are not substantiated with any proof, on which basis the State considers that such reasoning is "manifestly false". By the same token the State alleges that the document signed by the representative of the alleged victims relating to the deposit of the 305 animals is in keeping with the formalities of law and that there is no proof that the aforesaid representative felt compelled to sign. The State also indicates that a justice of the peace is competent to take up the case and, therefore, the claim that the latter could not perform an inventory is incorrect. The State also says that the Office of the Public Prosecutor of Chiapas accepted a conciliation proposal by the National Human Rights Commission. If the State Attorney-General's Office did in fact act negligently the petitioners should have made use of the remedies and proceedings under domestic law.

19. The State also asserts that the petitioners fall into contradiction in attempting to diminish the legal condition of their representative from "manager" to simple illiterate "employee". Nevertheless, the State affirms that the matter of representation and any dispute deriving therefrom is a matter for the courts that decide such matters. As to the amount of the valuations, the State holds the same position: any dispute is a matter for the administrative courts. Furthermore, in taking their case to the President of the Republic they did not exhaust any remedy whatsoever, since that procedure does not constitute a jurisdictional remedy. The State mentions further that conciliation is provided for by law and insists that the petitioners have not instituted any compensation proceedings under the legislation in force.

20. The State puts forward as grounds for inadmissibility the fact that the events described do not tend to establish a violation of human rights and that the petitioners have not exhausted the domestic remedies under Mexican laws. The Commission will proceed to examine the aforementioned admissibility requirements.

IV. ANALYSIS

A. Competence of the Commission *ratione materiae*, *ratione personae*, et *ratione temporis*

21. The Commission is competent *prima facie* to take up the instant petition. The petitioners have competency to appear before the Commission and have presented wrongs in relation to compliance with provisions established in the American Convention committed by agents of a state party thereto. The events alleged in the petition purportedly took place when the duty to respect and ensure the rights recognized in the Convention was in force for the State.[FN1]

[FN1] Mexico deposited its instrument of ratification of the American Convention on April 3, 1982.

B. Admissibility requirements for the petition

a. Exhaustion of domestic remedies

22. Before analyzing if the petition satisfies the requirement of exhaustion of domestic remedies, the Commission must determine in what the events denounced in the instant case consist, given that the petition is not clear on the question of the rights violated. According to the foregoing summary of the positions of the parties, the case concerns an invasion of private lands by a large group of people, who, according to the petitioners are linked to the EZLN armed dissident group. The said invasion allegedly caused major pecuniary losses to the petitioners, including the theft of livestock, destruction of property, and financial problems for the enterprise that works the lands. Although the petitioners do not refer in their complaint to the human rights they consider violated, by virtue of the principle of *iura novit curia* the Commission considers that they essentially refer to alleged acts in violation of the right to a fair trial and of the right to property.

23. The Commission recalls that, "Where a State claims that a petitioner has failed to discharge the requirement of exhaustion, the former bears the burden of indicating the specific remedies which remain available and effective"[FN2]. The State asserts that the suitable procedure for remedying unlawful acts is a preliminary investigation, which was started and led to the filing of a criminal suit and arrest warrants being issued by the competent judge.

[FN2] IACHR 1997 Annual Report, Report No. 28/98 (Case 11.625 - María Eugenia Morales de Sierra), Guatemala, para. 28, p. 154.

24. Against this response, the petitioners allege ineffectiveness of domestic remedies and delay in their settlement. The Commission finds, first, that the petitioners base their argument with respect to ineffectiveness of remedies on unsupported claims, such as the alleged connivance of the Chiapas authorities with the occupants. Indeed, the petitioners affirm that there is no political desire to settle the proceedings in light of the Government's peace negotiations with the EZLN,[FN3] for which reason they even impute to the Mexican State responsibility for the pecuniary losses they suffered because of the occupation of the lands. However, they did not offer a single element of proof during the case proceedings that tends to substantiate the alleged connection. Furthermore, they do not contest the State's affirmation to that effect, nor show that they have denounced this act before the jurisdictional organs in Mexico.

[FN3] In its recent report on Mexico, the Commission highlighted the importance of the peace negotiations between the Government and the EZLN armed dissident group, but observed that those negotiations had been "deadlocked" since November, 1996. For that reason, the IACHR recommended to the Mexican State "To resume and strengthen the initiatives for dialogue and peace, especially in conflict areas like Chiapas, so that agreements reached could be effectively implemented". IACHR, Report on the Situation of Human Rights in Mexico, OEA/Ser.L/V/II.100, Doc.7 rev. 1, September 24, 1998, paras. 574 and 587.

25. The petitioners' general allegations on the ineffectiveness of domestic remedies in Mexico cannot be considered as an argument that may exempt them from the requisite set forth in Article 46(1)(a) of the American Convention, unless they are supported by facts or situations that could be proven in the specific case.[FN4]

[FN4] See in that regard, IACHR, Report No. 82/98 (Case 11,703 – Gustavo Gómez López), Venezuela, September 28, 1998, paras. 20 to 24. That case was declared inadmissible because the petitioner failed to present convincing arguments to show the alleged lack of impartiality of the authorities as an argument to avoid complying with the requisite of previous exhaustion of domestic remedies.

26. As to duration, the Commission finds that the central matters in the petition have been dealt with: the State has certified, through its officials, that the lands are no longer occupied and that the prescribed measures have been taken to bring the persons accused of the crimes to justice. The petitioners have not contradicted these facts, nor shown that they contested them through the respective legal channels in Mexico. Furthermore, the information offered by the State, which the petitioners also fail to contradict, indicates that there are several matters mentioned in the petition in respect of which no legal action has been brought that would enable them to be settled.

V. CONCLUSIONS

27. The IACHR has established in this report that the petition does not satisfy the requirement set forth in Article 46(1)(a) of the American Convention and that the exceptions provided in Article 46(2) thereof do not apply. Once the Commission has concluded that the case is inadmissible by reason of failure to satisfy one of the requirements set forth in the American Convention, it is not necessary for it to rule on the rest.

28. The Commission concludes that the petition is inadmissible pursuant to Article 47(a) of the American Convention. Based on the arguments of fact and law set out above,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant case inadmissible.
2. To notify this decision to the petitioners and to the State.
3. To make public this decision and to include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on the 9th day of the month of March, 1999. (Signed): Robert K. Goldman, Chairman; Hélio Bicudo, First Vice-Chairman; Claudio Grossman, Second Vice-Chairman; Commissioners: Alvaro Tirado Mejía and Carlos Ayala Corao.