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Institution: Inter-American Commission on Human Rights
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Title/Style of Cause: Santos Soto Ramirez and Sergio Ceron Hernandez v. Mexico
Doc. Type: Decision
Decided by: Chairman: Claudio Grossman;
First Vice-Chairman: Juan E. Mendez;
Second Vice-Chairman: Marta Altolaguirre;
Commissioners: Robert K. Goldman, Peter Laurie, Julio Prado Vallejo, Helio Bicudo.
Dated: 14 June 2001
Citation: Soto Ramirez v. Mexico, Case 12.117, Inter-Am. C.H.R., Report No. 68/01, OEA/Ser./L/V/II.114, doc. 5, rev. (2001)
Represented by: APPLICANT: Barbara Zamora Lopez
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I. SUMMARY

1. On February 10, 1999, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the IACHR") received a complaint filed by Bárbara Zamora López of the Tierra y Libertad, A.C. Law Office ("the petitioner") alleging international responsibility on the part of the United Mexican States ("the State") for the illegal detention, solitary confinement, and torture of Santos Soto Ramírez, as well as his subsequent sentencing to 17 years in prison, in a trial that failed to respect the rules of due process and included the use of a confession obtained under torture. With regard to Sergio Cerón Hernández, the petitioner maintains that he was tried and sentenced in violation of his right to a fair trial. The petitioner alleges that the events outlined in the complaint constitute a violation of several provisions of the American Convention on Human Rights (hereinafter "the American Convention"): the right to humane treatment (Article 5); personal liberty (Article 7); a fair trial (Article 8); and judicial protection (Article 25).

2. Without prejudice to the merits of the case, the IACHR concludes in this report that the case is admissible, inasmuch as it meets the requirements set forth in Articles 46 and 47 of the American Convention. Consequently, the Inter-American Commission decides to notify the parties of the decision and to continue analysis of the merits regarding the alleged violation of Articles 5, 7, 8, and 25 of the American Convention.

II. PROCESSING BY THE COMMISSION

3. The petition was received on February 10, 1999, and transmitted to the Mexican State on March 18, 1999, under the number 12,117. The State submitted its observations on June 16, 1999, which were forwarded to the petitioner on June 22, 1999. The petitioners submitted their comments and additional information on August 18, 1999, January 10, 2000, and July 24, 2000. The corresponding additional comments of the State were submitted on October 7, 1999. The Inter-American Commission held a hearing on the case with both parties on March 2, 2000, at its 106th regular session. On March 7, 2000, the Mexican State submitted copies of criminal cases 56/995 and 224/996 pertaining to the events surrounding this case, which were forwarded to the petitioner.

III. POSITIONS OF THE PARTIES ON ADMISSIBILITY

A. The petitioner

4. The petitioner alleges that Santos Soto Ramírez was arrested on August 11, 1995, without an arrest warrant by unidentified persons, who transported him to an unknown building in the area of Xalapa, Veracruz. She further maintains that Mr. Soto Ramírez was tortured at that location over a period of four days, and that during this time, his captors made him sign several blank sheets of paper. Subsequently, these signed sheets were allegedly used to fabricate a confession in which Soto Ramírez admitted his culpability in the murder of Mrs. Gladys de los Angeles Avendaño Martínez, which was committed on October 23, 1994 in Ixhuatlán de Madero, Veracruz. Santos Soto Ramírez and Sergio Cerón Hernández were sentenced to 20 years in prison for the crime, a sentence that was reduced to 17 years as a result of an appeal filed by his defense. In support of their claims, they submit a copy of a letter from Amnesty International sent to the Governor of Veracruz on August 13, 1995, denouncing the clandestine detention of Santos Soto, and of Recommendation N°18/97 issued by the National Commission on Human Rights (the CNDH).[FN1]

[FN1] The above-mentioned correspondence informs the Governor of the concern of Amnesty International (AI) over the safety of Santos Soto Ramírez and another individual named Mascario de la Cruz Martínez, who were allegedly arrested on August 11, 1995, "by members of the Tantoyuca judicial police and transported to an unknown location in a Chevrolet vehicle that did not have tags." Amnesty International asks the Governor to disclose their place of detention, to permit them to communicate with their family and defense counsel, and "if they are not guilty of anything, to arrange for their immediate release." Also, the pertinent section of Recommendation 18/97 of the CNDH (case of the indigenous communities of the Huasteca region of Veracruz), made on March 24, 1997, states that "the National Commission takes note of the fact that the agents arrested Mr. Santos on August 11, 1995, and that he was not brought before the judge hearing the case until August 16, 1999, which means that he was illegally detained for more than 72 hours." Based on the foregoing, the CNDH recommended to the Governor of Veracruz that "he launch an administrative and criminal investigation to determine the possible responsibility of the public servants that ordered, carried out, and consented to the protracted detention of Mr. Santos Soto Ramírez." Citation from the Recommendation, pages 34 and 35, respectively.

5. The petitioner maintains that the extension of jurisdiction by the judicial authorities of Veracruz in the case of Santos Soto Ramírez and Sergio Cerón Hernández was arbitrary and illegal.[FN2] As a result, they were unable to defend themselves, inasmuch as they were away from their place of origin and, according to the petitioner, the public defender that was assigned to them did not submit any evidence whatsoever in their defense.

[FN2] The petitioner states, in this regard, that as a result of the extension of jurisdiction, the case was transferred in the first case to the Tuxpan Court of First Instance and in the second, to the Jalacingo Court of First Instance, which amounted to the removal of the accused from their place of origin and the appointment of a public defender, since it became impossible for them to retain their own attorney.

B. The State

6. In its response, the Mexican State indicated that criminal proceedings took place in October 1994 for the murder of Mrs. Gladys Avendaño in Veracruz, and warrants for the arrest of a number of persons were issued, including the alleged victims in this case. It argues that the Judicial Police "managed to apprehend" Santos Soto Ramírez and Sergio Cerón Hernández, "and made them immediately available to the judge who ordered their arrest." The State maintains that the extension of jurisdiction took place in accordance with the procedural rules of the state of Veracruz, and that during all phases of the case "the fundamental rights of the persons charged were fully respected, as were criminal and procedural laws." Also, with regard to the statement allegedly made by Santos Soto Ramírez to the judge hearing the case, the State maintains that "the testimony of visitors assigned to the CNDH cannot be given greater credence than the statements made and recorded before a competent judge."

7. The Mexican State also disputes the charges of torture of Santos Soto Ramírez. The position of the State in this regard is that this individual freely provided a statement to the judge hearing the case, with all guarantees being provided, and, at that time, he did not state that he had been subjected to any mistreatment whatsoever. With regard to Recommendation N° 18/97 of the CNDH, the Mexican State notes that the investigators of that entity did not indicate that Mr. Santos Soto Ramírez had been tortured.

8. With regard to the exhaustion of domestic remedies, the State alleges that the appeal for the recognition of innocence provided for in the legislation of the state of Veracruz is applicable and available to the alleged victims in this case.[FN3] Based on its claims, the State asks the Inter-American Commission to declare the case inadmissible.

[FN3] In this regard, the State indicates that:

Despite the clear-cut nature of the different decisions adopted in this case and the proven inaccuracy of the claims of the accused, these persons may still file an appeal for recognition of the innocence of an indicted person, a challenge provided for in the Mexican legal system that

would permit them to be freed if they meet the requirements for such a course of action and provide reliable proof of their claims.

Communication from the State dated June 16, 1999, page 8.

IV. ANALYSIS

A. Competence of the Inter-American Commission *ratione personae*, *ratione materiae*, *ratione temporis*, and *ratione loci*

9. In this case, the petitioners outline events that they describe as allegedly violating rights recognized and enshrined in the American Convention, and which allegedly occurred in Mexican territory when the obligation to respect and guarantee all the rights established in this instrument was in effect for this State.[FN4] The IACHR therefore has *ratione personae*, *ratione materiae*, *ratione temporis*, and *ratione loci* competence to hear the merits of the complaint.

[FN4] The Mexican State deposited its instrument of ratification of the American Convention on 3 April 1982.

B. Other admissibility requirements of the petition

a. Exhaustion of domestic remedies

10. In the case under analysis, a dispute exists regarding the appropriate and effective appeal that should be filed in Mexico to remedy the situation reported. The Inter-American Commission must determine whether the amparo proceedings instituted by the representatives of Santos Soto Ramírez and Sergio Cerón Hernández in Mexico, a ruling on which was handed down in September 1998, amounted to the exhaustion of domestic remedies, or whether the appeal for innocence of an indicted person mentioned by the State is appropriate in this case, which would leave pending fulfillment of the requirement set forth in Article 46(1)(a) of the American Convention.

11. The Mexican State describes this appeal as follows:

Provisions are made for recognition of innocence in Articles 560 to 568 of the Federal Code of Criminal Procedure of the state of Veracruz. Such a procedure is applicable in the following cases:

I. When the ruling is based exclusively on evidence that is later shown to be false.

II. When, after a sentence has been handed down, public documents surface that invalidate the evidence on which the ruling was based or the evidence presented to the jury that served as a basis for the indictment and verdict.

III. When an individual has been convicted of the murder of someone who has disappeared and irrefutable evidence later surfaces that the person is alive.

IV. When two prisoners have been convicted of the same offenses in different trials. In such a case, the less severe ruling shall be applied.[FN5]

[FN5] Communication from the State dated June 16, 1999, pages 8 and 9.

12. The position of the petitioner on the matter is that Santos Soto Ramírez and Sergio Cerón Hernández are not covered by any of the situations described above, and that an appeal for the recognition of innocence "is an special measure." The State notes, in this regard, that it would suffice to demonstrate to the Supreme Court that the evidence allegedly obtained under torture was false. However, the petitioner reiterates that since this "evidence" has not been declared false by any entity in Mexico, it does not meet the requirement set forth in the procedural legislation of that country to proceed with the appeal mentioned by the State.

13. In light of the information available in the file, the Inter-American Commission holds the view that the legal situation of Santos Soto Ramírez and Sergio Cerón Hernández is not included in the situations that are narrowly defined in Mexican legislation for the filing of an appeal for the recognition of innocence. The petitioner has indicated that she referred the matter to all the regular entities available in Mexico in an attempt to establish the innocence of the alleged victims of this case. In fact, it has been shown that the criminal ruling was appealed and then amparo proceedings were instituted in a bid to have the appropriate legal entity overturn the sentence imposed on Messrs. Soto Ramírez and Cerón Hernández. Also, the IACHR notes the contradictory argument of the Mexican State, since, on the one hand, it states that there is no evidence whatsoever of torture of Santos Soto Ramírez, and on the other, that the petitioner must exhaust an appeal which, in this case, would require precisely the establishment of torture as the grounds for a false confession by that person.

14. The requirement related to the exhaustion of domestic remedies set forth in Article 46 of the American Convention refers to available, appropriate, and effective judicial proceedings to remedy the alleged violation of human rights. As the Inter-American Court has stated time and time again, if in a given case an appeal is inappropriate for providing protection in order to remedy a legal situation and is not capable of producing the intended result, then clearly, it does not have to be exhausted.[FN6]

[FN6] See, for example, the Inter-American Court of Human Rights, Exceptions to the exhaustion of domestic remedies (Art. 46(1), 46(2), and 46(2)(b) of the American Convention on Human Rights. Advisory Opinion OC-11/90 of August 10, 1990, para. 36.

15. The IACHR concludes that the recognition of innocence provided for in Mexican legislation should not be exhausted in the case of Santos Soto Ramírez and Sergio Cerón Hernández. Consequently, the Inter-American Commission decides that domestic remedies in Mexico were exhausted with the ruling handed down on September 25, 1998 by the seventh circuit panel of criminal court judges.

b. Time period for submission

16. The petition was received on February 10, 1999, within the six-month period established in Article 46(1)(b) of the American Convention. Consequently, this requirement has also been met.

c. Duplication of proceedings and res judicata

17. The file related to this case does not contain any information that suggests that other proceedings related thereto are pending in the international sphere or that the Inter-American Commission has previously rendered a decision on the matter. Consequently, the IACHR concludes that the exceptions set forth in Article 46(1)(d) and Article 47(d) of the American Convention are not applicable.

d. Description of the facts alleged

18. In the view of the IACHR, the facts alleged, if proven to be true, would constitute a violation of the rights guaranteed in Articles 5, 7, 8, and 25 of the American Convention.

V. CONCLUSIONS

19. The Inter-American Commission concludes that it is competent to examine the merits of the case and that the petition is admissible pursuant to Articles 46 and 47 of the American Convention. Based on the arguments of fact and law outlined above, and without prejudice to the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES TO:

1. Declare the case admissible with respect to the alleged violation of the rights protected under Articles 5, 7, 8, and 25 of the American Convention.
2. Notify the parties of this decision.
3. Continue with an analysis of the merits of the case, and
4. Publish this decision and 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 Washington, D.C., on June 14, 2001. (Signed): Claudio Grossman, President; Juan E. Méndez, First Vice-President; Marta Altolaguirre, Second Vice-President; Robert K. Goldman, Peter Laurie, Julio Prado Vallejo, Hélio Bicudo, Commissioners.