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File Number(s):	Report No. 81/01; Case 12.228
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Title/Style of Cause:	Alfonso Martin del Campo Dodd v. Mexico
Doc. Type:	Decision
Decided by:	President: Claudio Grossman; First Vice President: Juan E. Mendez; Second Vice-President: Marta Altolaguirre; Commissioners: Robert K. Goldman, Peter Laurie, Julio Prado Vallejo, Helio Bicudo.
Dated:	10 October 2001
Citation:	del Campo Dodd v. Mexico, Case 12.228, Inter-Am. C.H.R., Report No. 81/01, OEA/Ser./L/V/II.114, doc. 5, rev. (2001)
Represented by:	APPLICANT: Action by Christians for the Abolition of Torture, the Center for Justice and International Law (CEJIL) and the Lawyers' Committee for Human Rights.
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I. SUMMARY

1. On July 13, 1998, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the IACHR”) received a complaint submitted by Alfonso Martín del Campo Dodd alleging that the United Mexican States (“the State”) had incurred in international responsibility through his illegal arrest and torture and his subsequent conviction to serve a 50-year prison term handed down at a trial at which the rules of due process were not respected, including the use of a confession obtained by means of torture. In a subsequent communication, the following bodies registered themselves as petitioners: Action by Christians for the Abolition of Torture (ACAT), the Center for Justice and International Law (CEJIL), and the Lawyers’ Committee for Human Rights (LCHR).

2. The petitioners allege that the incidents reported in the complaint constitute a violation of several provisions of the American Convention on Human Rights (hereinafter the “American Convention”): right to humane treatment (Article 5), to personal liberty (Article 7), to a fair trial (Article 8), and to judicial protection (Article 25). They also claim that all the admissibility requirements set forth in the American Convention have been met. The Mexican State maintains that no violations of the American Convention are involved, since Mr. Martín del Campo had access to several courts of law and proceedings wherein due process was respected and torture was not proven, and because his conviction stands as *res judicata* and as such cannot be reviewed

by the IACHR. The State therefore asks the Inter-American Commission to declare this petition inadmissible.

3. prejudging the merits of this case, in this report the IACHR concludes that the petition is admissible in that it meets the requirements set by Articles 46 and 47 of the American Convention. The Inter-American Commission has therefore decided to notify the parties of that decision and to continue analyzing the merits of the complaint with respect to the alleged violations of Articles 5, 7, 8, and 25 of the American Convention.

II. PROCESSING BY THE INTER-AMERICAN COMMISSION

4. Mr. Martín del Campo submitted additional documentation in a communication on July 17, 1998; the Inter-American Commission replied on August 10, 1998, asking him for additional information regarding the admissibility requirements contained in Articles 46 and 47 of the American Convention. The petitioners' submission of October 27, 1999 was transmitted to the Mexican State on November 4, 1999, as No. 12.228. The State submitted its comments on February 2, 2000, which were forwarded to the petitioners on February 17. The petitioners sent comments and additional information on April 13, 2000, March 22, 2001, and May 31, 2001. The State's corresponding additional observations were presented on July 21, 2000, April 21, 2001, and July 9, 2001. On October 1, 2001, the petitioners presented a submission in which they reported that a final ruling had been handed down in the amparo relief proceedings in Mexico. The Inter-American Commission held a hearing on this case, attended by both parties, on October 11, 2000, during its 108th regular session. Both sides requested extensions, which were granted by the Inter-American Commission.[FN1]

[FN1] The petitioners filed for extensions on March 16, August 25, November 10, and December 22, 2000, and then again on February 16, 2001. The State filed for extensions on May 6, 2000, and March 22, 2001.

III. POSITIONS OF THE PARTIES REGARDING ADMISSIBILITY

A. Petitioners

5. According to the petitioners, on May 29, 1992, Mr. Alfonso Martín del Campo Dodd was asleep at his home (which he shared with his sister Patricia Martín del Campo Dodd, his brother-in-law Ricardo Zamudio Aldaba, and their three daughters) in Mexico City when, at around midnight, he heard panicked screams from his sister. While he was on his way to see what was happening, two unknown individuals, with stockings over their heads, struck him several times in an attempt to leave him unconscious. They then told him to get dressed, placed him in the trunk of one of the cars parked at the house, and drove for 25 minutes before stopping the car. Mr. Martín del Campo claims that he managed to open the trunk, after which he went off in search of help; he finally reached a Federal Highway Police station on the Cuernavaca road.

6. According to the complaint, one of the police officers accompanied Mr. Martín del Campo back to the vehicle. There they found a glove and a knife, which the victim recognized as the one that his unknown assailants had used to threaten him. He was then taken back home by another officer. Upon arriving he saw an ambulance parked in front of the house and was told that his sister and brother-in-law had been murdered. Mr. Martín del Campo was then taken to the Benito Juárez precinct complex where, the petitioners claim, he was tortured by officers of the judicial police:

They placed a plastic bag over his entire head; they then squeezed the bag so he would not get enough air, while the judicial police officers wrote up their version of events. He was subjected to coercion from between 10 and 12 officers; he also received severe blows, administered with wet cloths, to his stomach and to his head. He also received open-handed slaps on to his face and was kicked in the testicles; the police officers took turns to hit him, and they forced him to sign and place his thumbprint on an incriminating statement. In the statement that he gave under coercion, Alfonso Martín del Campo Dodd admitted having killed both his sister and his brother-in-law, and he also stated that he tried to fake a kidnapping to conceal his guilt.[FN2]

[FN2] Petitioners' submission, October 27, 1999, pp. 3-4.

7. Mr. Martín del Campo was tried and sentenced to a 50-year prison term for killing both his sister and his brother-in-law. The petitioners claim that the trial openly violated due process, essentially because the sole evidence upon which his conviction was based was the statement he was coerced into giving under torture and because he did not receive assistance from an attorney or other person of his confidence. The internal investigation conducted by the Office of the Attorney General for Justice of the Federal District (PGJDF), launched at the request of Mr. Martín del Campo's family, determined in October 1994 that Police Officer Sotero Galván Gutiérrez had incurred in administrative responsibility for the following:

Having arbitrarily detained him and having beaten him, thus failing to safeguard the legality and honesty he is required to observe; carrying out actions that constituted an abuse of his position or the undue exercise thereof, for failing to comport himself correctly in his job, for having violated other legal provisions related to public service, including the Operations Manual of the Judicial Police; because he failed to respect the principles of legality and constitutionality with respect to the complainant; because he did not refrain from the use of force and did not safeguard the basic rights [of Mr. Martín del Campo].[FN3]

[FN3] Decision of the Internal Controller of the PGJDF of October 14, 1994, PGJDF File QC/011/FEB-94, quoted in the petitioners' submission of October 27, 1999, paragraph 9, p. 4.

8. The petitioners report that the alleged victim's defense counsel pursued numerous remedies provided by domestic law: criminal action for torture on May 11, 1995; proceedings 57/92 before Criminal Court 55, against Alfonso Martín del Campo Dodd; appeal filed with the

Eighth Chamber of the Superior Court of Justice of the Federal District; amparo relief proceedings before the Eighth Chamber of the Federal District's Fourth Collegiate Criminal Court; and, finally, a recognition of innocence remedy, which was declared inadmissible by the Superior Court of Justice of the Federal District on April 6, 1999. They also pursued nonlegal remedies: namely, they lodged complaints with the PGJDF's Internal Controller, with the National Human Rights Commission (CNDH), and with the Human Rights Commission of the Federal District (CDHDF). The petitioners believe that the evidence submitted to all these instances was sufficiently conclusive to resolve Alfonso Martín del Campo Dodd's situation; however, none of these proceedings succeeded in remedying the injustice set forth in the complaint. Consequently, they maintain that the admissibility requirements contained in Articles 46 and 47 of the American Convention have been met.

B. State

9. In its first reply regarding this petition, the State provided a summary of the criminal proceedings brought against Mr. Martín del Campo, in which it claims that the alleged victim's defense had "the right to exhaust all the probatory means necessary to refute his assumed involvement." The summary also says that the judge "weighed up the elements made available to him and on the basis of applicable law... judged the accused guilty and imposed a sentence of fifty years in prison." The State referred to the appeal, which upheld the original sentence, and to the amparo relief sought by Mr. Martín del Campo's defense, which was dismissed because "no guarantees had been violated." The Mexican State also referred to the recognition of innocence remedy that was declared inadmissible on April 29, 1999, and to the complaints lodged with the CNDH and the CDHDF; it also mentioned the documents and the procedures followed, which led it to conclude that "there is no forensic evidence that Alfonso Martín del Campo Dodd was subjected to acts of torture by public employees."

10. The position of the Mexican State, contained in its reply to the Inter-American Commission, is that "as far as the judicial authorities are concerned, this matter is *res judicata*" and that both the CNDH and the CDHDF investigated the case and "concluded that there was no evidence to indicate a possible violation of Mr. Martín del Campo's human rights"[FN4] (emphasis per original). The Mexican State asked the Inter-American Commission to declare this petition inadmissible on the grounds that it did not describe possible violations of the American Convention. This position was repeated in its submission of July 21, 2000, in which the State said that "the IACHR must not act as a fourth instance over and above countries' jurisdictional mechanisms" (emphasis per original) and that the substance of the complaint lodged with the Inter-American Commission was now *res judicata* in accordance with Article 23 of the Mexican Constitution, which stipulates that "no criminal trial shall have more than three instances."

[FN4] Submission from the Mexican State, February 2, 2000, p. 4.

11. However, in its communication with the Inter-American Commission dated April 21, 2001, the State said that there were still remedies provided by domestic jurisdiction that had not been exhausted. This position was repeated in its next submission, dated July 9, 2001.

IV. ANALYSIS

A. Competence of the Commission Ratione Personae, Ratione Materiae, Ratione Temporis, and Ratione Loci

12. The petitioners are entitled, under Article 44 of the American Convention, to lodge complaints with the IACHR. As the alleged victims, the petition names individual persons with respect to whom Mexico had assumed the commitment of respecting and ensuring the rights enshrined in the American Convention. With respect to the State, the Commission notes that Mexico has been a party to the American Convention since March 24, 1981, when it deposited the corresponding instrument of ratification. The Commission therefore has competence *ratione personae* to examine the complaint.

13. The Commission has competence *ratione loci* to deal with the petition since it alleges violations of rights protected by the American Convention occurring within the territory of a state party thereto. The IACHR also has competence *ratione temporis* since the obligation of respecting and ensuring the rights protected by the American Convention was already in force for the State on the date on which the incidents described in the petition allegedly occurred. Finally, the Commission has competence *ratione materiae* since the complaint describes violations of human rights protected by the American Convention.

B. Other Requirements for Admissibility

a. Exhaustion of Domestic Remedies

14. The case at hand involves a dispute regarding whether or not the domestic remedies provided in Mexico were exhausted or not; the Inter-American Commission must therefore adopt a decision in that regard.

15. On the first available occasion in these proceedings—that is, in its reply of February 2, 2000, to the Commission’s transmission of the petition—the State made no reference to domestic remedies still pending in Mexico. Its second opportunity was in its note of July 21, 2000, replying to the petitioners’ comments; again, on this second occasion, the State failed to invoke the exception set forth in Article 46(1)(a) of the American Convention. On July 21, 2001, in its third communication with the IACHR, the State said that “as a result of the hearing before the Honorable Commission on October 11, 2000, it was made evident that there were remedies provided by domestic law that had not been exhausted in this case.”

16. The State thus claims that domestic remedies have at all times been available to the petitioners. It maintains that the domestic remedies applicable to the torture allegations reported to the IACHR were not exhausted, in that Mr. Martín del Campo Dodd’s defense counsel did not lodge an amparo suit, which would have been an ideal and effective remedy for questioning the Public Prosecution Service’s decision to refrain from pursuing criminal action in connection with those claims. It also maintains that a decision is still pending in the review remedy lodged against the amparo suit filed to revoke the dismissal of recognition of innocence. The Mexican

State “reserves the right to offer additional considerations on the admissibility and merits of the petition once a final ruling has been given in the aforesaid amparo proceedings.”[FN5]

[FN5] State’s submission, April 21, 2001, p. 1.

17. The petitioners claim that Mexican domestic jurisdiction was exhausted with the decision handed down on April 29, 1999, by the Superior Court of Justice of the Federal District, dismissing the recognition of innocence of Alfonso Martín del Campo Dodd. As regards the dismissed amparo suit and the appeal filed against that decision, the petitioners have consistently maintained that they continued to take juridical actions, in the understanding that, in accordance with the applicable jurisprudence of the inter-American system, those actions were not remedies that had to be exhausted. In their submission of October 1, 2001, the petitioners informed the IACHR that the Fourth Collegiate Criminal Court of the First Circuit did, on September 3, 2001, hand down a ruling dismissing the amparo suit filed by Mr. Martín del Campo’s representatives.[FN6]

[FN6] The petitioners state that the ruling of September 3, 2001, “concludes all the domestic instances for reviewing the case.” They add:

Although the State maintained that there were still domestic remedies to be exhausted—a claim that was not accepted by the petitioners—the Collegiate Court’s judgment upholding the dismissal of the amparo suit must force the Commission to conclude that all domestic remedies were exhausted and, consequently, to proceed with the corresponding report on admissibility.

It should be noted that although the amparo suit and the corresponding appeal were filed, none of the courts embarked on an analysis of the merits of the case because of the inadmissibility of the innocence remedy; this serves to underscore the ineffectiveness of the remedies provided by domestic law.

Petitioners’ submission, October 1, 2001, p. 1.

18. The Inter-American Commission notes that the Mexican State did not invoke the failure to exhaust domestic remedies in the earliest stages of proceedings. On the contrary: it only did so in its third communication with the IACHR, after a hearing had been held and more than one year after its first submission in connection with this matter.

19. The Inter-American Court has on repeated occasions ruled that objections alleging a failure to exhaust domestic remedies, in order to be considered timely, must be raised in the early stages of proceedings; otherwise, the State is assumed to have tacitly waived that right.[FN7] The Inter-American Commission therefore holds that in this case, the Mexican State waived its right to argue that domestic remedies had not been exhausted, in that it failed to do so within the established legal deadlines and, in addition, failed to do so at the first available opportunity in the proceedings—that is, in its reply to the petition with which the proceedings began.

[FN7] For example, see: Inter-Am.Ct.H.R., *Mayagna (Sumo) Awas Tingni Community Case, Nicaragua*, Judgment on the Preliminary Objections, February 1, 2000, paragraph 53. In that same judgment, the Inter-American Court ruled that “in order to validly oppose the admissibility of the petition... the State should have expressly and in a timely manner invoked the rule that domestic remedies should be exhausted” (emphasis per original); *ibid.*, paragraph 54.

b. Timeliness of the Petition

20. In the instant case, the IACHR has established that the Mexican State tacitly waived its right to argue that domestic remedies were not exhausted, and so the requirement contained in Article 46(1)(b) of the American Convention does not apply. However, the Convention’s requirement that domestic remedies be exhausted is independent of the requirement that the petition be lodged within six months following the judgment exhausting domestic jurisdiction. The Inter-American Commission must therefore decide whether this petition was submitted within a reasonable delay. The IACHR thus notes that Mr. Martín del Campo Dodd’s original communication was received on July 13, 1998, prior to the filing of the recognition of innocence remedy. In light of the particular circumstances of this petition, the IACHR holds that it was submitted within a reasonable period of time.

c. Duplication of Proceedings and Res Judicata

21. The petition documents contain no information to indicate that this matter is pending in any other international settlement proceeding or has been previously examined by the Inter-American Commission. The IACHR therefore concludes that the exceptions provided for in Article 46(1)(d) and Article 47(d) of the American Convention are not applicable.

d. Characterization of the Alleged Facts

22. The IACHR believes that the alleged incidents, if proven true, would tend to characterize violations of the rights enshrined in Articles 5, 7, 8, and 25 of the American Convention.

V. CONCLUSIONS

23. The Inter-American Commission concludes that it is competent to examine the substance of this case and that the petition is admissible under Articles 46 and 47 of the American Convention. Based on the foregoing considerations of fact and law, and without prejudging the substance of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this case admissible as regards the alleged violations of the rights contained in Articles 5, 7, 8, and 25 of the American Convention.
2. To give notice of this decision to the parties.

3. To continue with its analysis of the merits of the complaint.
4. To publish this decision and to include it in its Annual Report to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on the tenth day of October, 2001. (Signed): Claudio Grossman, President; Juan E. Méndez, First Vice-President; Marta Altolaguirre, Second Vice-President; Commissioners Robert K. Goldman, Peter Laurie, Julio Prado Vallejo, and Hélio Bicudo.