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Title/Style of Cause:	Cruz Avila Mondragon v. Mexico
Doc. Type:	Decision
Decided by:	President: Jose Zalaquett; First Vice-President: Clare K. Roberts; Second Vice-President: Susana Villaran; Commissioners: Robert K. Goldman, Julio Prado Vallejo.
Dated:	22 October 2003
Citation:	Avila Mondragon v. Mexico, Petition 12.287, Inter-Am. C.H.R., Report No. 81/03, OEA/Ser.L/V/II.118, doc. 5 rev. 2 (2003)
Represented by:	APPLICANT: the Commission in Solidarity and Defense of Human Rights, A.C. and the Center for Justice and International Law
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I. SUMMARY

1. On May 16, 2000 the Inter-American Commission on Human Rights (“the Inter-American Commission” or “the IACHR”) received a petition presented by the Commission in Solidarity and Defense of Human Rights , A.C. and the Center for Justice and International Law (COSYDDHAC y CEJIL, hereinafter jointly, “the petitioners”), alleging that the United Mexican States (“the State”) bears international liability for the arbitrary deprivation of freedom, torture, and forced disappearance of Cruz Ávila Mondragón, which events took place from February 1, 1999. The petitioners also claim that the Mexican State is internationally liable for the failure to investigate and punish the reported facts.

2. The petitioners allege that the reported facts constitute a violation of a number of provisions of the American Convention on Human Rights (hereinafter the “American Convention”): the right to life (Article 4); personal integrity (Article 5); judicial guarantees (Article 8); and judicial protection (Article 25) in connection with Articles 1(1) and 2 of said Convention and the corresponding provisions of the Inter-American Convention to Prevent and Punish Torture. They also allege that all the requirements of admissibility envisaged in the American Convention have been met. The Mexican State maintains that there have been no violations of the American Convention, given that the allegations in the report have not been demonstrated; it also alleges that domestic remedies have not been exhausted. Consequently, the State requests that the Inter-American Commission declare the petition inadmissible.

3. Without pre-judging the merits of the case, the IACHR finds in this report that the case is admissible because it meets the requirements stated in Articles 46 and 47 of the American

Convention. Wherefore, the Inter-American Commission decides to notify the parties of the decision and to continue its review of the merits of the alleged violation of Mr. Cruz Ávila Mondragón's rights guaranteed in Articles 4, 5, 7, 8, and 25 of the American Convention, as well as Articles I, III, and XI of the Inter-American Convention on the Forced Disappearance of Persons, and Articles 1 and 8 of the Inter-American Convention to Prevent and Punish Torture.

II. PROCEEDINGS BEFORE THE IACHR

4. On July 30, 1999, the petitioners presented a request for cautionary measures to protect the life and personal integrity of Cruz Ávila Mondragón. On July 22 of that year, the IACHR dispatched the pertinent parts of the request to the Mexican State and requested that it provide information on the matter within 15 days. The Mexican State responded on August 6, 1999, stating that it was investigating the matter and that it would send additional information at a later date. The Inter-American Commission transmitted that communication to the petitioners on August 12, 1999 and requested their comments within 15 days.

5. On May 16, 2000, the petitioners presented a communication that they called "petition to open a case," in which they reported the forced disappearance of Cruz Ávila Mondragón. The Inter-American Commission transmitted the pertinent parts of the petition to the Mexican State on June 1, 2000 and requested information by the established deadline in the those proceedings.[FN1] The parties continued to submit their comments and additional information until the Inter-American Commission considered that the position of each party was sufficiently clear.[FN2]

[FN1] The Rules of Procedure of the IACHR in effect from April 8, 1980 to May 1, 2001 provided in Article 34(5) that "the Commission shall ask the Government in question to provide the requested information within 90 days of the date on which the request is made".

[FN2] The Mexican State replied by note of August 30, 2000, the pertinent parts of which were transmitted to the petitioners on September 19 of that year. On October 18, 2000, the petitioners requested a postponement, which was granted by the Inter-American Commission on October 26, 2000 for 15 days. On December 22 of that year, the petitioners requested another postponement to "expand on and supplement the information; on January 16, 2001, the postponement was granted for an additional 30 days. On February 16, 2001 the communication containing the petitioners' comments was received and transmitted to the State on March 13 of that year. On April 11, 2001, the State requested an extension, which was granted on the 23rd of that month for 30 days. On May 22, 2001 information was received from the State, which was brought to the attention of the petitioners on May 30 of that year. On June 30, 2001, the petitioners' comments were received and the Inter-American Commission transmitted them to the State on July 20, 2001. On August 10, 2001, the petitioners requested a working meeting during the 113th regular session of the IACHR. On August 21, 2001, additional information was received from the State, which was conveyed to the petitioners on the 27th of that month. On September 27, 2001, the petitioners requested a new extension of the deadline to submit their comments; on October 9, 2001, they presented those comments. On November 14, 2001, a working meeting was held on this case at the headquarters of the IACHR, with the petitioners and the Mexican State. On November 21, 2001, the document with the petitioners' comments

was sent to the Mexican State. On January 3, 2002, the Mexican State requested an extension to present additional information, which was granted up until January 15, 2002 in a letter from the IACHR dated January 5 of that year.

III. POSITIONS OF THE PARTIES ON ADMISSIBILITY

A. The petitioners

6. The petitioners maintain that “the Commission should define the acts committed against Cruz Ávila as forced disappearance because the behavior of agents of the Mexican State perfectly match the description given in international human rights instruments, as well as the criteria established by the Court.”[FN3] They indicate that Cruz Ávila Mondragón was deprived of his freedom on February 1, 1999 by the Municipal Police of Chihuahua when he and Misael Labra Domínguez allegedly tried to steal a ladder, a fact the Mexican State acknowledges. However, although the State maintains that he was subsequently released, the petitioners do not consider that the State has proven this claim. Based on the jurisprudence of the Inter-American system, they allege that “in cases where persons disappear while in the custody of the State, the latter’s responsibility is greater, and its behavior must be subject to greater scrutiny.”[FN4] Finally, they argue that the Mexican State violated its duty to respect and guarantee rights, as well as to adopt the internal legal provisions required under Articles 1(1) and 2 of the American Convention.

[FN3] Communication from the petitioners of May 16, 2000, pgs. 7 and 8.

[FN4] Communication from the petitioners of March 1, 2002, pg.3.

7. The petitioners claim that the exception to the exhaustion of domestic remedies envisaged in Article 46(2)(a) of the American Convention is applicable in this case, in view of the ineffectiveness of amparo and the criminal investigation, as forced disappearance is not a crime on the law books in Mexico. They also state that the relatives filed a complaint with the Chihuahua State Human Rights Commission (CEDH) even though they knew that exhaustion was not necessary, because they “intended to intensify the search for the whereabouts of Cruz Ávila and to elucidate the facts surrounding his disappearance.” The CEDH’s recommendation in the case was subsequently rejected by the Attorney General’s Office of the State of Chihuahua (“PGJC”).

8. Regarding the deadline for presentation, the petitioners affirm that they are “within the required time limits for presenting the petition,” since “forced disappearance is a crime against humanity, to which the six-month deadline referred to in Article 46.1.b of the American Convention does not apply.”[FN5]

[FN5] Idem, pg. 7.

B. The State

9. In response to the report, the Mexican State offers its version of the facts, according to which Cruz Ávila Mondragón and Misael Labra Domínguez were detained on February 1, 1999 in the city of Chihuahua, “accused of attempted robbery of a metal ladder.” It adds that they were handed over to the Municipal Public Security Department of the PGJC, where “they were held under arrest for 36 hours” and that “as no formal charges were laid to confirm the preliminary inquiries, both persons were released on February 3, 1999.”

10. The Mexican State indicates that there were numerous contradictions and omissions in Mr. Misael Labra Domínguez’s statements to the Office of the Attorney General of Justice of Morelos (“PGJM”), which made it “difficult to clarify the facts.” Furthermore, the State maintains that Mr. Labra Domínguez could not have seen whether they beat Cruz Ávila Mondragón because he was in another cell and could not see the one in which Cruz Ávila Mondragón was held. According to Labra Domínguez’s account to the PGJM, Ávila Mondragón was released on February 2, 1999 and returned to ask about Labra Domínguez. The State affirms that this is not possible because “both had to be held for 36 hours to enable the accuser to file formal charges.”[FN6] It also maintains that Labra Domínguez omitted to say that both he and Mr. Ávila Mondragón were intoxicated at the time of their arrest.[FN7]

[FN6] The Mexican State adds that in the lists of detainees that were released after having completed their hours of detention “the release of both Cruz Ávila and Misael Labra is recorded on February 3, 1999 with a notation “RELEASED - COMPLETED” thereby granting their release 36 hours after their arrest” (emphasis in the original). Communication from the Mexican State dated August 30, 2000, pg. 2.

[FN7] According to the Mexican State, the person in charge of examining the detainees at the Public Security Department in Chihuahua reported that “neither Cruz Ávila nor Misael Labra were injured but were intoxicated with barbiturates (sedatives).” Idem.

11. The State proceeded to list “the actions taken to determine the whereabouts of Mr. Cruz Ávila Mondragón,” which include preliminary inquiries initiated by the PGJM and the PGJC. They also note that they posted notices with Mr. Ávila Mondragón’s picture and the telephone number of the PGJM at “strategic points in the city of Chihuahua”.[FN8]

[FN8] Idem, pgs. 3 and 4.

12. The Mexican State maintains that in this case does not constitute a violation of human rights because “as the investigations at that time show, there was absolutely no indication that public servants or functionaries were involved in the alleged disappearance.”[FN9] Furthermore, the State maintains that domestic remedies in Mexico have not been exhausted, notwithstanding which, in subsequent communications it expresses its willingness to collaborate with the Inter-

American Commission by providing information on the progress of the case. Consequently, the Mexican State requests that the IACHR declare the petition inadmissible on grounds that it fails to demonstrate potential human rights violations and for failure to exhaust domestic remedies.

[FN9] *Idem*, pg. 4. The Mexican State also affirms that “the petitioners’ arguments are unfounded because there is no evidence that would lead to the determination, without reasonable doubt, that the state’s officers are responsible as alleged” and that the State ‘has demonstrated strict compliance with the legal provisions in effect, therefore no violation of human rights has been proven.’

IV. ANALYSIS

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

13. Under Article 44 of the American Convention, the petitioners are entitled to submit reports to the IACHR. The petition claims that the alleged victim is an individual, in whose regard Mexico made a commitment to respect and guarantee the rights established in the American Convention. In respect of the State, the Commission notes that Mexico has been a party to the American Convention since March 24, 1981, when it deposited its instrument of ratification. Therefore, the Commission has competence *ratione personae* to review the petition.

14. The IACHR has competence *ratione loci* to hear the petition because it alleges that human rights protected in the American Convention were violated in the territory of Mexico, a state party to that treaty. The Inter-American Commission also enjoys competence *ratione temporis*, because the obligation to respect and guarantee the rights protected in the American Convention was already binding on the State on the date on which the events alleged in the petition occurred. Finally, the Commission is competent *ratione materiae*, due to the fact that the petition reports violations of human rights protected by the American Convention.

B. Other requirements for admissibility of the petition

a. Exhaustion of domestic remedies

15. Article 46(1)(a) of the American Convention provides that the admissibility of a petition presented to the Commission shall be subject to the requirement “that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.” Article 46(2) of the Convention establishes three potential situations in which the rule on exhaustion of domestic remedies does not apply: a) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

16. The parties in this matter concur that the domestic remedies in Mexico have not been exhausted. However, the State and the petitioners differ as to the applicability of the exceptions to this requirement, hence the need for the Inter-American Commission to make a statement on the matter.

17. The petitioners maintain that the Mexican State “has no remedy capable of resolving a case of forced disappearance such as that of Cruz Ávila.” They allege that the mechanisms that could be tried in this type case are amparo and filing a criminal report, but that in Mexico neither of these is the proper remedy. With respect to the first remedy, the petitioners contend that:

Under the Mexican amparo law, the petition for amparo must indicate the state authority that ordered and executed the alleged human rights violation and where the injured party can be found. In cases of forced disappearance, compliance with this provision is unenforceable since disappearance essentially means that it is impossible to know the whereabouts of the person who has disappeared, since the place of detention is concealed. As demonstrated in other previous cases before the Commission, the result of such an impossibility is the dismissal of the amparo suit by the judge pursuant to Article 74(IV) of the law under reference.

In addition, amparo must be ratified by the victim within three days of filing the appeal. Without such ratification, the petition is considered as not having been filed. Like the previous provision, this requirement makes any recourse to amparo impracticable, given the nature of disappearance, namely that it is impossible to know the whereabouts of the complainant.[FN10]

[FN10] Communication from the petitioners of May 16, 2000, pgs. 4 and 5.

18. With respect to the criminal investigation, the petitioners explain that in Mexico the forced disappearance of persons is not a crime on the law books, so the Attorney General’s Office has initiated a preliminary inquiry into the crime of “deprivation of freedom by means of kidnapping.” According to the petitioners, in the case of Cruz Ávila Mondragón, the PGJE in Chihuahua began a preliminary inquiry that had produced no results up to the time the petition was presented; in subsequent communications they reiterate this argument.[FN11] The petitioners allege that the delay is unwarranted, as a result of which the exception of Article 46(2)(c) of the American Convention is applicable, and therefore they are dispensed from exhausting that remedy.

[FN11] The petitioners said that, despite the fact that reports were submitted to the competent judicial bodies, “to date there has been no success in identifying those responsible for the disappearance, so that they can be brought to trial...nor have they succeeded in locating the whereabouts of Mr. Cruz Ávila Mondragón, in spite of the fact that three years have passed since the case was filed with the state institutions, which is sufficient time for the government to have been able to demonstrate its capacity for domestic resolution.” Communication from the petitioners of April 18, 2002, pg. 3.

19. For its part, the Mexican State maintains that “until the investigations by the Attorney General’s Offices of the states of Chihuahua and Morelos end, domestic remedies are still operative and, therefore, it is not possible to present any exception thereto.”[FN12] In each of its subsequent communications, the Mexican State updates its account of the steps taken in both investigations.[FN13] The State also mentions procedures before the CEDH and the National Human Rights Commission (CNDH). Finally, it alludes to the conduct of “administrative proceedings against the officer responsible for the loss of the papers concerning Mr. Ávila Mondragón’s belongings.”[FN14]

[FN12] Communication from the State of August 30, 2000, pg. 5.

[FN13] The Mexican State affirms that “the actions of the ministerial authorities of the State of Chihuahua in the preliminary inquiries of 11/99 are all placed on record for the sole purpose of determining the true account of the facts, which is the objective and obligation of the public prosecutor’s office during the preliminary inquiry stage,’ given that, up until that time, it was considered that the requirements of Article 16 of the Constitution had not been met in order to issue an arrest warrant. The State adds that “in this case, the inquiries are continuing as is the discovery, because there is no evidence to date that shows any violation of the physical integrity of Mr. Cruz Ávila Mondragón during his confinement in the Municipal Public Security facilities.” Communication from the State of January 18, 2002, pgs. 4 and 5.

[FN14] Communication from the State of March 18, 2002, pg. 3.

20. When a State alleges that domestic remedies have not been exhausted, it must indicate which remedies must be exhausted and demonstrate their effectiveness.[FN15] In that case, the petitioners then bear the burden of proving that said remedies have been exhausted or that an exception under Article 46(2) of the American Convention applies.

[FN15] Inter-American Court of Human Rights, Velásquez Rodríguez Case, judgment on preliminary exceptions cited, para. 88. See also, Fairén Garbi and Solís Corrales Case, Preliminary Exceptions, Judgment of June 26, 1987, Series C No. 2, para. 8; Godínez Cruz Case, Preliminary Exceptions, Judgment of June 26, 1987, Series C No. 3, para. 90; Gangaram Panday Case, Preliminary Exceptions, Judgment of December 4, 1991, Series C No.12, para. 38; Neira Alegría et. al Case, Preliminary Exceptions, Judgment of December 11, 1991, Series C No.13, para. 30; Castillo Páez Case, Preliminary Exceptions, Judgment of January 30, 1996, Series C No. 24, para. 40; Loayza Tamayo Case, Preliminary Exceptions, Judgment of January 31, 1996, Series C No. 25, para. 40; Exceptions to Exhaustion of Domestic Remedies (Art. 46.1, 46.2.a and 46.2.b American Convention on Human Rights), Advisory Opinion OC-11/90 of August 10, 1990, Series A No.11, para. 41.

21. Without entering into a detailed analysis of the arguments put forward by the parties on the alleged violation of judicial guarantees and judicial protection, the Inter-American

Commission observes, in a preliminary manner, that on the date of approval of this report, more than four years had gone by since the forced disappearance of Cruz Ávila Mondragón was reported. In this regard, it must be noted that the Human Rights Comisión of the State of Chihuahua highlighted the defects of the investigation and its negative effect on the determination of the events, as set forth in its recommendation dated December 1999.[FN16] According to the information available to the IACHR, none of these have been closed nor have they shed light, comprehensively or definitively, on the events reported.

[FN16] The CEDH established:

It has caught the attention of this organ that, regardless of the fact that the denunciation was received on February 23 of last year, the testimony of the cell mates of Mr. Cruz Avila Mondragón was still not received by September 13, that is, seven months after his disappearance was denounced...this State Commission even heard their testimony first [before the judicial organs did] (Evidence labeled 30.1, 30.2, 30.3 and 30.4). All these deficiencies have resulted in a slow pace in the investigation, which makes the clarification of the facts difficult...

State Human Rights Commission of Chihuahua, Recommendation N° 70/99 of December 17 1999, Fifth Consideration, p. 39.

22. In light of the foregoing, and of the findings in the case file, the Inter-American Commission establishes—for the purposes of admissibility—that there has been an unwarranted delay on the part of the Mexican jurisdictional authorities in reaching a decision on the reported allegations. Consequently, in this case, the IACHR waives the exhaustion of domestic remedies requirement envisaged in Article 46(2)(c) of the American Convention.

23. The Inter-American Court of Human Rights has established that invoking exceptions to the rule of exhaustion of domestic remedies envisaged in Article 46(2) is closely linked to the determination of possible violations of certain rights laid down in the American Convention, such as the right to due process and judicial protection established in Articles 8 and 25.[FN17]

[FN17] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Preliminary Exceptions, Judgment of June 26, 1987, Series C No. 1, para 91. See also Inter-American Court of Human Rights, “Judicial Guarantees in States of Emergency” (Arts. 27.2, 25, and 8 of the American Convention on Human Rights)”, Advisory Opinion OC-9/87 of October 6, 1987, Series A No. 9, para. 24.

24. However, the content of Article 46(2), by its nature and purpose, is independent of the substantive provisions of the American Convention. Therefore, any determination regarding the applicability of exceptions to the rule on exhausting domestic remedies to the case under reference should be carried out prior to and separate from the review of the merits of the case, since the parameters for judgment are different from those used to determine whether Articles 8 and 25 of the Convention have been violated. The causes and effects that prevented exhaustion of domestic remedies in Mexico in the present case will be analyzed in the report adopted by the

IACHR on the merits of the dispute, in order to determine whether violations of the American Convention actually occurred.

b. Deadline for Presentation

26. In accordance with Article 46(2) of the American Convention, the unwarranted delay in reaching a decision on the domestic remedies results in the inapplicability of the requirements of exhaustion and filing within six months from the date of notification of the final decision. Article 32(2) of the Rules of Procedure of the IACHR determine in that regard:

In those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.

27. The petition under reference was lodged on May 16, 2000; a little over one year after the forced disappearance of Cruz Ávila Mondragón had been reported in Mexico. According to the findings in the case, during the period February 1999 to the date on which the petition was lodged with the IACHR, the petitioners took a number of steps to move the investigation forward. Also, on July 20, 1999 a request for precautionary measures was presented to the Inter-American Commission to guarantee the life and physical integrity of Mr. Ávila Mondragón. Up until the date on which this report was adopted, there was no indication that the proceedings in the domestic jurisdiction had been completed.

28. The IACHR considers, based on the information given above, that the petition was presented within reasonable time limits in accordance with Article 32(2) of its Rules of Procedure.

c. Duplication of proceedings and res judicata

29. The file on the petition has no information whatsoever that might lead one to believe that the matter is pending resolution in another international forum or has been previously decided by the Inter-American Commission. The IACHR therefore concludes that the exceptions provided in Article (1)(d) and Article 47(d) of the American Convention do not apply.

d. Description of the allegations

30. The petitioners allege the illegal detention, torture, and forced disappearance of Cruz Ávila Mondragón, as well as the failure to investigate and punish those responsible for such acts. For its part, the Mexican State alleges that the facts do not constitute possible violations of the American Convention because it considers that the domestic evidence proves that Mr. Ávila Mondragón left the prison in Chihuahua and that there is nothing to indicate that the state authorities are responsible for his alleged disappearance.

31. It is not appropriate to establish at this stage of the proceedings whether there was indeed a violation of the American Convention. For the purposes of admissibility, the IACHR must

determine whether facts that fit the description of a violation have been presented, as stipulated in Article 47(b) of the American Convention. The parameters for judgment on these grounds are different from the requirements for ruling on the merits of the complaint. The Inter-American Commission must conduct a prima facie evaluation to examine whether the report provides grounds for the apparent or potential violation of a right guaranteed by the American Convention. This is a summary analysis, which does not imply prejudice or put forward an opinion on the merits of the case. The distinction between the review of the statement on admissibility and the review required to determine a violation is reflected in the Rules of Procedure of the IACHR, which clearly establish different stages for admissibility and merits.

32. The petitioners' allegations refer to facts, which, if true, would constitute violations of the rights guaranteed by the American Convention and other international instruments. Despite the fact that the Mexican State alleges that there has been no violation, the information submitted indicates that the investigation into the fate of Mr. Cruz Ávila Mondragón after having been in the custody and exclusive control of officers of the State in February 1999 has not been definitively concluded. The IACHR believes that the facts presented warrant closer and more comprehensive examination of the petition in the merits stage.

33. The IACHR considers that the facts, if proven, would constitute violations of the rights of Mr. Cruz Ávila Mondragón guaranteed in Articles 1(1), 4, 5, 7, 8, and 25 of the American Convention, in connection with Articles 1(1) and 2 of that international instrument; and of Articles 1 and 8 of the Inter-American Convention to Prevent and Punish Torture.[FN18] The IACHR therefore considers that the petitioners have proven prima facie the grounds required in Article 47(b) of the American Convention.

[FN18] The Mexican State ratified the Inter-American Convention to Prevent and Punish Torture on June 22, 1987. The State also ratified the Inter-American Convention on the Forced Disappearance of Persons on April 9, 2002, after the start of this case. The applicability of the latter instrument to this case will be determined in the discussion on the merits, in light of the interpretative statement made by the State upon depositing the instrument of ratification.

V. CONCLUSIONS

34. The Inter-American Commission finds that it is competent to hear the merits of this case and that the petition is admissible under Article 46 and 47 of the American Convention. Based on the arguments in fact and in law presented above, and with no pre-judgment on the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible with respect to the alleged violations of the rights of Mr. Cruz Ávila Mondragón protected under Articles 4, 5, 7, 8, and 25 of the American Convention and Article 1 and 8 of the Inter-American Convention to Prevent and Punish Torture;
2. To notify the parties of this decision;
3. To proceed to review the merits of the case; and
4. To publish this decision and 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 22nd day of the month of October, 2003. (Signed): José Zalaquett, President; Clare K. Roberts, First Vice-President; Susana Villarán, Second Vice-President; Robert K. Goldman and Julio Prado Vallejo, Commissioners.