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File Number(s): Report No. 58/06; Petition 1083-05
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Title/Style of Cause: Erwin Haroldo Ochoa Lopez and Julio Armando Vasquez Ramirez v. Guatemala
Doc. Type: Decision
Decided by: President: Evelio Fernandez Arevalos;
Second Vice-President: Florentin Melendez;
Commissioners: Clare K. Roberts, Freddy Gutierrez Trejo, Victor E. Abramovich.
Dated: 20 July 2006
Citation: Ochoa Lopez v. Guatemala, Petition 1083-05, Inter-Am. C.H.R., Report No. 58/06, OEA/Ser.L/V/II.127, doc. 4 rev. 1 (2006)
Represented by: APPLICANT the Centro de Accion Legal Ambiental y Social de Guatemala
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I. SUMMARY

1. On September 27, 2005, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the IACHR”) received a complaint filed by the Centro de Acción Legal Ambiental y Social de Guatemala (CALAS) (hereinafter “the petitioners”) alleging the international responsibility of the Republic of Guatemala (“the State”) for failure to conduct a proper investigation into the murders of Messrs. Erwin Haroldo Ochoa López and Julio Armando Vásquez Ramírez (hereinafter “the alleged victims”), which allegedly occurred in reprisal for their work in defense of Guatemala’s environmental resources. The petitioners argued that the facts referred to in the complaint constituted a violation of Articles 8.1 and 25.1 of the American Convention on Human Rights (“the American Convention”) in conjunction with the obligations deriving from Article 1.1 of that instrument.

2. As regard to the admissibility of their claim, the petitioners argued that six years after the facts, the Guatemalan authorities had not tried and punished all the perpetrators and planners of the crimes, due to their disinterest in determining the responsibility of the latter and making reparation for damages. In the petitioners’ view, this has rendered domestic remedies ineffective as a means of reverting the breach of the law, which constitutes an exception to the requirement that domestic remedies first be exhausted.

3. For its part, the State requested that this petition be declared inadmissible because two people were convicted of the crimes and “according to the Attorney General’s Office, investigations are under way to determine the responsibility of the instigators in the case at hand.” The State also argued that the petition does not describe facts that imply a violation of

rights protected by the American Convention, and for that reason it asked that the petition be declared inadmissible, in accordance with Articles 34 and 27 of the Rules of Procedure of the IACHR.

4. Having examined the contentions of the parties on the question of admissibility, the Commission concludes that it is competent to hear the petition presented by the petitioners and that said petition is admissible, in light of Article 48 of the American Convention. Consequently, the Commission decides to notify the parties of its decision, to continue analyzing the merits of the case with regard to alleged violations of the American Convention, to publish this Admissibility Report, and to include it in its Annual Report for the OAS General Assembly.

II. PROCEEDINGS BEFORE THE COMMISSION

5. On September 27, 2005, the Commission received a complaint lodged by the Centro de Acción Legal Ambiental y Social de Guatemala (CALAS), which was registered as number P-1080/05. On December 8, 2005, the IACHR forwarded the complaint to the Government of Guatemala, asking it to present its observations within two months. On January 27, 2006, the State asked the IACHR for a two-month extension of the deadline. On February 14, 2006, the Commission granted the extension requested by the State. On April 10, 2006, the State submitted its observations on the admissibility of the petition.

III. POSITIONS OF THE PARTIES

A. The petitioners

6. In their complaint the petitioners argued that, as shown in the report entitled “Situation of Environmental Human Rights Defenders,” in Guatemala there is little tolerance for those who devote themselves to the defense of the environment. The petitioners stated that in recent years there had been at least four murders, as well as constant threats, arrests, and attempted lynchings of a number of ecologists because of their struggle to defend the country’s natural heritage, especially in the Izabal region.

7. The petition alleged that on February 29, 2000, Mr. Erwin Haroldo Ochoa López and Mr. Julio Armando Vásquez Ramírez, both of whom worked for the National Council of Protected Areas (CONAP) in Puerto Barrios, were shot dead when they came out of a restaurant in Puerto Barrios, Izabal. According to eye witnesses, an individual accompanied a few meters away by another on a motorbike waiting for him, approached the alleged victims and shot them without a single word. The petitioners pointed out that at the time of the murder Mr. Ochoa was in charge of processing numerous cases of offenses against the region’s natural heritage, especially illegal felling of trees, invasions of protected areas, depredation, and illegal trafficking in wild flora and fauna.

8. According to the complaint, criminal investigation into the execution of the alleged victims began on February 29, 2000. The District Prosecutor’s Office in Puerto Barrios was put in charge of the initial inquiries. The petitioners argued that on March 20, 2000, the Criminal Investigation Branch of the National Civilian Police issued a report in which it listed and singled

out interviews with witnesses, the possible motives for the crime, and those who might have committed it. That report pointed to a former army colonel as the alleged instigator.

9. On February 13, 2003, the Prosecutor's Office filed a criminal indictment of Jairo Humberto Gómez Sandoval, Werner Gómez Sandoval, and Elder Estuardo Morales Hernández as alleged co-perpetrators of the double homicide with the First Criminal Court of First Instance, Regional Drug Trafficking, in Chiquimula. The alleged motive of the accused, according to the Prosecutor's Office, was "financial because, according to investigations carried out by the Civilian National Police and the Criminal Investigations Branch of the Office of the Attorney General, retired Colonel Ottoniel Ponciano García paid them to commit the murders of the CONAP representatives, because a complaint had been lodged against him for illegal deforestation in the Punta de Manabique Reserve." [FN1]

[FN1] Office of the Attorney General (Ministerio Público), Office of the Special Prosecutor "CONAP Case," file MP. 1052-2000 on Folio I, Judicial File, Piece I.

10. On February 17, March 26, and May 8, 2003, the First Criminal Court of First Instance, Regional Drug Trafficking, in Chiquimula decided to consider that requests to bring the three alleged perpetrators to trial had been presented. Public oral proceedings took place on November 12, 2003. On November 13, 2003, the First Criminal Court of First Instance, Regional Drug Trafficking, in Chiquimula convicted two of the accused of murder and sentenced each of them to 27 years in prison. On December 5 and 11, 2003, two of the convicted appealed the sentence. Said appeal was turned down by the Sixth Chamber of the Court of Appeals in Zacapa on March 17, 2004. On April 14, 2004, one of those convicted appealed for a reversal of the lower court ruling. That appeal was dismissed on March 29, 2005 by the Supreme Court of Justice.

11. The petitioners argued that although in the instant case actions by domestic bodies brought about the sentencing of two of the perpetrators, the instigators of the crime had gone unpunished. This occurred, according to the petitioners, despite the existence of judicial records warranting the opening of an inquiry as to the instigators of the crime. [FN2] In the petitioners' opinion, despite that evidence, the Attorney General's Office took no steps to corroborate it and only indicted the perpetrators. Furthermore, the court responsible for seeing that justice was done omitted to take the evidence regarding instigation into account. This omission occurred in both the oral proceedings and in sentencing.

[FN2] The petitioners pointed to the following evidence in the file with respect to instigation: 1. Official letter of January 15, 2000 in which Mr. Ochoa López informed the Regional Director of CONAP about threats received from Colonel Ottoniel Ponciano García; 2. Report of March 20, 2000 by the Criminal Investigation Service of the National Civilian Police pointing to the retired colonel as the alleged instigator; 3. Preliminary confrontation in which one of the accused stated that the crime had been committed "for money"; 4. Report of July 25, 2002 on environmental impacts caused by Mr. Ochoa; 5. Statement by witness Erick Rolando Duarte on October 16, 2002 indicating that the motive of the perpetrators was a payment in cash.

12. The petitioners pointed out that although, in its indictment brief, the Attorney General's Office establishes that the accused did what they did in exchange for money, no questions were asked during the proceedings about the person who allegedly paid. The petitioners also argued that following the conviction of the perpetrators, the Attorney General's Office did not ask for proceedings to continue with respect to instigators, nor did the court hearing the case so resolve. The petitioners pointed out that although, following the conviction of two of the accused, proceedings were left open against Werner Sandoval – currently a fugitive from justice – as alleged co-perpetrator of the crime, nowhere in the judgment is there any reference to the instigation, nor are the proceedings left open with respect to instigators.

13. Regarding the requirements for the petition to be admitted, the petitioners argued that “in cases such as this, where there exists no interest in determining the responsibility of the authors of the crime and making reparation for the damage done, the rule that domestic remedies first be exhausted does not apply, by virtue of Article 46.2 of the Convention.” The petitioners further argued that their petition met the other requirements established in Articles 44 and 46 of the Convention.

14. Based on such facts, the petitioners conclude that the State violated the rights contained in Article 8 and 25 of the American Convention, in conjunction with the general obligation established in Article 1.1 of that treaty, as it did not effectively and diligently fulfill its duties to investigate, identify, try, and punish the instigators of the violations committed to the detriment of the alleged victims.

B. The State

15. The State asked for the case to be declared inadmissible. The State argued on its own behalf, first, that in the instant case there was no denial of justice that would warrant an exception to the rule that domestic remedies must be exhausted. At the same time, the State argued that the allegedly violated rights contained in the American Convention did not match the facts stated as the grounds for the petition.

16. According to the State, while it is true that the facts giving rise to the petition originated in the murders of two people, it is also true that there was an effective investigation and due process of law, leading to a public oral proceeding, which ended with the convictions of Messrs. Jairo Humberto Gómez Sandoval and Elder Estuardo Morales Hernández, who were sentenced to unchangeable terms of 27 years in prison by the “High Impact” Court of the department of Chiquimula.

17. The State claimed that the investigation is still active and that the proceedings remain open. In its response, the State pointed out that according to information provided by the Office of the Attorney General “the case continues to be investigated with respect to the instigators of the events that gave rise to the petition.”

18. As for the alleged violation of Articles 8.1 and 25.1 of the American Convention, the State argued that “this is not consistent with the facts that gave rise to the petition against the State of Guatemala, because those articles refer to the judicial protection offered to anyone being tried and to access to a remedy to safeguard such persons from acts that violate their fundamental rights. In the instant case, the petitioners were not subjected to a criminal trial in which their fundamental rights were violated; hence, there exists no violation of Article 8.1.” The State asserted further that “there was no impossibility for the petitioners to have access to simple and effective recourse to protect the rights they consider breached, so that there exists no violation of Article 25.1 either.”

19. In light of the above considerations, the State asked the Commission, pursuant to Articles 46.1 and 47 of the American Convention, to declare the petition inadmissible because it does not expound facts that constitute violations of human rights and because of failure to exhaust the remedies provided under domestic law.

IV. ANALYSIS OF ADMISSIBILITY

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

20. The petitioners are empowered by Article 44 of the American Convention to lodge petitions with the Commission. The petition indicates that the alleged victims were Erwin Haroldo Ochoa López and Julio Armando Vásquez Ramírez, individuals covered by Guatemala’s commitment to respect and guarantee the rights contained in the American Convention. As far as the State is concerned, the Commission notes that Guatemala has been a State Party to the American Convention since May 25, 1978, the date on which it deposited its instrument of ratification. Accordingly, the Commission has the competence *ratione personae* to examine the petition.

21. The Commission is competent *ratione materiae* because the petitioners allege violations of rights protected by the American Convention, which, if proved, could constitute violations of Articles 1.1, 8, and 25 of said Convention.

22. The Commission is competent *ratione loci*, since the alleged violations of rights occurred within the territory of a State Party to the American Convention. The Commission is competent *ratione temporis*, because the Guatemalan State’s obligation to respect and guarantee the rights upheld in the American Convention was already in effect when the alleged facts began.

B. Other requirements for admissibility

1. Exhaustion of domestic remedies

23. Article 46.1.a of the American Convention provides that the admissibility of a petition submitted to the Inter-American Commission pursuant to Article 44 is subject to the requirement that remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to enable national

authorities to have the opportunity to address the alleged violation of a protected right, and where appropriate resolve it, prior to any submission before an international mechanism.

24. The requirement of prior exhaustion applies when domestic remedies are available in practice within the national system, and would be adequate and effective in providing a remedy for the alleged violation. In this sense, Article 46.2 specifies that the requirement is not applicable when the domestic legislation does not afford due process for the protection of the right in question; or if the alleged victim did not have access to domestic remedies; or if there was unwarranted delay in reaching a final judgment in response to the invocation of those remedies. As indicated by Article 31 of the Commission's Rules of Procedure, when a petitioner alleges one of these exceptions, it then falls to the State to demonstrate that domestic remedies have not been exhausted, unless that is clearly evident from the record.

25. According to the principles of international law as reflected in the precedents established by the Inter-American Commission and Court, the State that alleges non-exhaustion of domestic remedies must indicate which remedies should have been exhausted, as well as provide evidence of their effectiveness. [FN3] In the instant case, the petitioners have argued that an exception to the requirement to exhaust the remedies applies because negligence in investigating the instigators has rendered the criminal law remedy ineffective, now that over six years have elapsed since the investigation began. The State made a broad reference to "the case continu[ing] to be investigated with respect to the instigators of the events," but neither pointed to nor presented any kind of evidence of a specific action to substantiate that assertion. Based on: the provisions of Article 46 of the Convention and Article 31 of the Rules of Procedure and its review of the case file, the Commission concludes that it is appropriate to apply the unwarranted delay exception with respect to rendering a final judgment under domestic remedies.

[FN3] See, e.g., IACHR, Report N° 32/05, petition 642/03, Admissibility, Luis Rolando Cuscul Pivaral and other persons affected by HIV/AIDS, Guatemala, March 7, 2005, paras. 33-35; I/A Court H.R., The Mayagna (Sumo) Awas Tingni Community Case. Preliminary Objections, supra, para. 53; I/A Court H.R., Durand and Ugarte Case. Preliminary Objections. Judgment of May 28, 1999. Series C No. 50, para. 33; and I/A Court H.R., Cantoral Benavides Case. Preliminary Objections. Judgment of September 3, 1998. Series C No. 40, para. 31.

26. The Commission draws its conclusion from the fact that there is no indication in the internal judicial file on the case that, to date, the persons pointed to by the probative material during the proceedings as alleged instigators of the murders have been called upon to make a statement; nor does it appear in the judgment of the first instance court, in the judgment ruling on the appeal, or the judgment dismissing the appeal for annulment that any order was imparted to the Office of the Attorney General to continue investigations into the instigators of the crimes. The State has the ex officio obligation to initiate an inquiry aimed at elucidating the facts and punishing, where appropriate, all those responsible for them, including both the perpetrators and the instigators.[FN4] The Commission finds that the judicial authorities had indications pointing to the alleged instigators from early January 2000 and that to date no investigation has been carried out to confirm or refute those indications. The State has provided no explanation for this

failure to act for more than six years, although it is its procedural obligation to justify the reasons for the time taken in order to demonstrate, in turn, that its laws afford effective remedies. The State has not met any of these requirements. Consequently, the Commission considers that there has been unwarranted delay in rendering a final judgment under domestic criminal law.

[FN4] I/A Court H.R., Pueblo Bello Massacre Case. Judgment of January 31, 2006, par. 143; and I/A Court H.R., Moiwana Community Case. Judgment of June 15, 2005. Series C. No. 124, para. 145.

2. Submission of the petition within the time allowed

27. In accordance with Article 46.1.b of the Convention, a petition must be presented in a timely manner to be admitted, namely, within six months from the date on which the complaining party was notified of the final judgment at the domestic level. The six-months rule ensures legal certainty and stability once a decision has been taken.

28. In those cases in which an exception to the requirement of prior exhaustion applies, Article 32 of the Commission's Rules of Procedure provides that petitions must be presented within a reasonable period of time, as determined by the Commission. In accordance with this Article, in its analysis the Commission "shall consider the date on which the alleged violation of rights has occurred and the circumstances of each case."

29. With respect to the petition under review, the Commission has established that it is appropriate to apply the exception of unwarranted delay in rendering a final judgment under domestic remedies referred to in Article 46.2.c of the American Convention, so that it must proceed to evaluate whether the petition was lodged within a reasonable time with regard to the specific circumstances of the situation brought to its attention. The Commission observes that the petition was lodged on September 27, 2005, that is to say, before expiry of the six months following the Supreme Court ruling on the appeal for annulment filed by one of the perpetrators of the facts. Based on that fact, the Commission concludes that the complaint under review was lodged within a reasonable period of time.

3. Duplication of international procedures and res judicata

30. It is not apparent from the file that the subject of the petition is pending in another international proceeding for settlement or is substantially the same as one previously studied by this or another international organization. Accordingly, the requirements established in Articles 46.1.c and 47.d of the Convention are deemed to have been met.

4. Characterization of the facts alleged

31. In the instant case, it is not incumbent upon the Commission at this stage of the proceedings to decide whether the alleged violations of rights of the alleged victim established in the American Convention took place. For admissibility purposes, the IACHR must at this point

only decide whether facts are described, which, if proved, could constitute violations of the Convention, as stipulated in Article 47.b of the American Convention, and whether the petition is “manifestly groundless” or “obviously out of order,” as specified in paragraph c. of that same Article.

32. The criterion governing an assessment of these matters differs from that applicable to a pronouncement on the merits of the case. The IACHR has to conduct a *prima facie* evaluation and determine whether the petition substantiates an apparent or potential violation of a right guaranteed by the Convention, but it does not have to establish the existence of that violation. The examination called for at this point is simply a preliminary analysis that does not prejudice, or express an advance opinion on the merits of the case. By establishing two clearly separate phases of admissibility and merits, the Rules of Procedure of the Commission reflect this distinction between the evaluation the Commission must undertake in order to declare a petition admissible and that required to establish a violation.

33. In the Commission’s opinion, the State’s arguments that there allegedly were no violations of judicial guarantees and judicial protection do not amount for admissibility purposes to a demonstration that the petition was manifestly groundless or evidently out of order. Such arguments will be examined by the Commission at the merits of the case stage. The Commission considers, on the basis of its extensive doctrine, that the lack of investigation and punishment of persons allegedly responsible for violations of human rights could render a State internationally liable for the violation of rights protected by the American Constitution. Accordingly, the Commission does not regard the arguments put forward by the petitioners as manifestly groundless with respect to possible breaches of Articles 8 and 25 of the American Convention in conjunction with Article 1.1 of the same instrument.

V. CONCLUSION

34. The Commission concludes that the case is admissible and that the Commission is competent to examine the petitioner’s complaint regarding the alleged violation of Articles 1, 8, and 25 of the American Convention.

35. By virtue of the above-mentioned factual and legal arguments, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the case at hand admissible with respect to Articles 8 and 25 of the American Convention, in conjunction with the obligations referred to in Article 1.1. of that same treaty.
2. To transmit this document to the petitioners and to the State.
3. To continue its analysis of the merits of the case.
4. To publish this report and to include it in the Commission’s Annual Report to the OAS General Assembly.

Done and signed in the city of Guatemala, Guatemala, on the 20th day of the month of July 2006. (Signed): Evelio Fernández Arévalos, President; Florentín Meléndez, Second Vice-president; Clare K. Roberts, Freddy Gutiérrez Trejo, and Víctor E. Abramovich, Commissioners.