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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 74/09; Petition 386-02
Session:	Hundred Thirty-Fifth Regular Session (3 – 8 August 2009)
Title/Style of Cause:	Mickey Alexis Mendoza Sanchez and Family v. Ecuador
Doc. Type:	Decision
Decided by:	President: Luz Patricia Mejia Guerrero; First Vice President: Victor Abramovich; Second Vice President: Felipe Gonzalez; Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Florentin Melendez, Paolo Carozza.
Dated:	5 August 2009
Citation:	Mendoza Sanchez v. Ecuador, Petition 386-02, Inter-Am. C.H.R., Report No. 74/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)
Represented by:	APPLICANT: Armando Cervantes Canarte Villacis
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I. SUMMARY

1. On July 22, 2002, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition lodged by Galo Mendoza Zambrano and Armando Cervantes Cañarte Villacís (hereinafter “the petitioners”) alleging the responsibility of the Republic of Ecuador (hereinafter “the State”) for the death of the child Mickey Alexis Mendoza Sánchez, allegedly at the hands of a member of the Ecuadorian National Police, on April 11, 1999, in the city of Guayaquil.

2. The petitioners claim that the State is responsible for violating the rights to life, to humane treatment, to a fair trial, and of the family as enshrined in Articles 4.1, 5.1, 8, and 17 of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”), all in conjunction with the duty of ensuring those rights set out in Article 1.1 thereof. In turn, the State maintains that the petitioners’ claims are inadmissible because they failed to observe the six-month deadline set by Article 46.1 and because the IACHR should not act as an appeals court to review the decisions of the police criminal justice system.

3. After analyzing the positions of the parties and in compliance with the requirements set forth in Articles 46 and 47 of the American Convention, the Commission decides to rule the case admissible as regards the alleged violation of Articles 4.1, 5.1, 8.1, 19, and 25 of the American Convention, in conjunction with Article 1.1 thereof. It also decides to rule the case inadmissible as regards the alleged violation of Article 17 of the American Convention, to notify the parties of this report, and to order its publication in its Annual Report.

II. PROCESSING BY THE COMMISSION

4. The Commission registered the petition as No. P 386-02 and, on November 15, 2002, it forwarded the relevant parts of it to the State, along with a two-month deadline for it to return its comments. On May 1, 2003, the State sent its reply, which was conveyed to the petitioners on May 19, 2004, with a deadline of one month for them to return their comments.

5. On December 16, 2008, the IACHR asked the petitioners for up-to-date information in order to ascertain whether the grounds for the petition still existed, pursuant to Article 48.1.b of the American Convention. On January 14, 2009, the petitioners requested an extension of the deadline for returning their reply, which was granted on January 16, 2009. On February 17, 2009, the petitioners submitted their reply, which was forwarded to the State for comments on April 15, 2009. The State submitted no comments within the given deadline. On July 8, 2009, for informative purposes, additional details submitted by the petitioners were sent to the State. In August 3, 2009 the State requested an extension to submit observations. The extension was not granted given that the time to submit observations had lapsed.

III. POSITIONS OF THE PARTIES

A. Petitioners

6. The petitioners claim that on April 11, 1999, the Uribe Zambrano family called the police because a gang of youths were involved in a brawl in a district of the city of Guayaquil. In response, two police cars conducted a patrol of the district, with one of them parking in front of the Uribe Zambrano family home. They claim that Second Lieutenant Carlos Alberto Iturralde Salazar and Officer Danilo Barriga Moreno came onto the land belonging to the house, took out their service weapons without just cause, and swapped them among themselves, apparently to judge their weight and find out which was heavier. They state that around 9:45 p.m., Mickey Mendoza, aged 14, was at the door of the Uribe Zambrano family home, using a broomstick as a hobby-horse. They claim that he pointed the broomstick at 2nd Lt. Carlos Iturralde Salazar's weapon and that, in response, the police officer said, "You're a fucking pest," before fatally shooting him in the forehead. They therefore hold that the death of Mickey Mendoza was caused by an agent of the State on active police duty, with his service weapon.

7. They also claim that the National Police initially refused to begin administrative or legal proceedings against the police officers involved in the incident. They report that Mickey's family filed a complaint that led to proceedings against 2nd Lt. Carlos Alberto Iturralde Salazar before the police criminal justice system, with the charges later expanded to cover a further five police officers.

8. They claim that the trial was marred by violations of the right to a fair trial. Specifically, they state that the First Judge of the Fourth National Police District and the National Police Court failed to act impartially. They claim that during the evidence phase, the police files, expert technical rulings, and police reports seen by the proceedings were prepared without any participation by the deceased's family and that the interpretation given to them was distorted; that they contradicted the statements given by eye-witnesses of the incident; that false witnesses

were presented; and that other witnesses gave statements on behalf of the accused because they were either pressured or promised reciprocal favors. They also report that during the trial, Mickey Mendoza was described as having been “a gang member, death-wish crazy, with a twisted mentality,” and that it was claimed that he was trying to get himself hurt in order to secure compensation from the State.

9. They report that the First Judge of the Fourth National Police District handed down a first-instance conviction against 2nd Lt. Carlos Iturralde Salazar for the crime of involuntary manslaughter and ordered the acquittal of the other five police officers against whom charges had been brought. The Second National Police District Court overturned the involuntary manslaughter conviction, describing it as disproportionate, and ruled the crime to be intentional; it therefore sentenced 2nd Lt. Iturralde Salazar to a prison term of eight years. Then, claim the petitioners, the National Police Court, in ruling on the appeal at the third instance, found the killing to be involuntary manslaughter and reduced 2nd Lt. Carlos Iturralde’s prison term to two years. They also claim he was suspended from the National Police, instead of being expelled as required by law. They indicate that Carlos Iturralde Salazar was later released from prison after serving one year, four months, and ten days of his sentence.

10. To summarize, the petitioners claim that the Ecuadorian State is responsible for violating the rights to life, to humane treatment, to a fair trial, of the family, and the general obligation of respecting and ensuring the rights protected by the American Convention, pursuant to Articles 1.1, 4, 5, 8, and 17 thereof.

B. State

11. The State considers inadmissible the petitioners’ claim disputing the ruling of the National Police Court that convicted 2nd Lt. Carlos Iturralde Salazar of the crime of involuntary manslaughter. Ecuador believes that regardless of whether the findings of the domestic courts were favorable to the petitioners’ interests or not, those proceedings were the ideal remedy for resolving situations such as the one described in the instant claim.

12. The State holds that it does not fall to the IACHR to review the decision of the National Police Court whereby 2nd Lt. Carlos Iturralde Salazar was convicted of the crime of involuntary manslaughter. Its position is that the IACHR lacks the competence to review decisions reached by the domestic courts within their sphere of jurisdiction and in accordance with judicial guarantees, unless violations of the American Convention are detected. It adds that the international protection of human rights must not be confused with criminal justice, since the former is not intended to establish individual criminal responsibility but rather to protect the victims and to order redress for any harm caused.[FN1] Ecuador maintains that the results reached through a fair trial do not constitute violations of the American Convention. Thus, it holds that the decision of the National Police Court in the case at hand was adopted in accordance with law in a trial that was conducted according to the law.

[FN1] The State grounds its argument on the jurisprudence of the Inter-American Court in the case of Fairén Garbi. See: I/A Court H. R., Fairén Garbi and Solís Corrales Case, Judgment of March 15, 1989, paragraph 136.

13. The State further holds that the petitioners' claim fails to meet the requirement set by Article 46.1.b of the American Convention, which rules that petitions lodged later than six months after notification of the final judgment shall not be considered admissible. Thus, it claims that the petitioners filed their petition on November 15, 2002, ten months after the National Police Court issued its final judgment on December 3, 2001.

14. In consideration whereof, the State believes that the instant petition does not meet the requirements set by Article 46 of the American Convention and it requests that the Commission rule it inadmissible.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

15. The petitioners are entitled, in principle, to lodge petitions with the Commission under Article 44 of the American Convention. The petition names, as its alleged victim, an individual person with respect to whom the Ecuadorian State had assumed the commitment of respecting and ensuring the rights enshrined in the American Convention. With respect to the State, the Commission notes that Ecuador has been a party to the American Convention since December 8, 1977, when it deposited the corresponding instrument of ratification. The Commission therefore has competence *ratione personae* to examine the complaint.

16. The Commission has also competence *ratione loci* to deal with the petition since it alleges violations of rights protected by the American Convention occurring within the territory of Ecuador, which is a state party to that treaty. The Commission 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 petition describes possible violations of human rights that are protected by the American Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

17. Article 46.1.a of the American Convention requires the prior exhaustion of the resources available under domestic law, in accordance with generally recognized principles of international law, as a requirement for the admissibility of claims regarding alleged violations of the American Convention. Article 46.2 of the Convention states that the prior exhaustion of domestic remedies shall not be required when:

- 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.

First of all, the remedies still to be exhausted in the case at hand must be identified. The Inter-American Court has ruled that only those remedies appropriate for resolving the alleged violations need be exhausted. Adequate domestic remedies are:

Those which are suitable to address an infringement of a legal right. A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance. If a remedy is not adequate in a specific case, it obviously need not be exhausted. A norm is meant to have an effect and should not be interpreted in such a way as to negate its effect or lead to a result that is manifestly absurd or unreasonable.[FN2]

[FN2] I/A Court H. R., Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 63.

18. In the case at hand, the State claims that the available resources were exhausted with the final judgment of the National Police Court, handed down on December 3, 2001. In turn, the petitioners submitted information on the proceedings pursued, although they submitted no specific claims regarding the exhaustion of domestic remedies. The Commission notes that the death of Mickey Mendoza was examined in proceedings before the police criminal courts that concluded with the National Police Court's third-instance ruling that convicted 2nd Lt. Carlos Iturralde Salazar of involuntary manslaughter.

19. The Commission has repeatedly held that special jurisdictions, like those of the military or the police, are not an appropriate venue and thus do not afford an adequate remedy for investigating, prosecuting, and punishing possible violations of the human rights protected by the American Convention, such as right to life, allegedly committed by members of the security forces.[FN3] Article 187 of the Political Constitution of Ecuador of 1998 (in force at the time of the incident) stipulated that: "Members of the security forces shall be judged by special courts in the prosecution of offenses committed while on active duty. In cases involving common offenses, they shall be judged by the regular courts." Those special courts were provided by the Police Justice System and the Military Criminal Justice System. Consequently, the prosecution by the police courts of members of the National Police involved in actions such as those described in the instant petition does not offer a suitable remedy in the terms of Article 46.1.a of the American Convention.

[FN3] IACHR, Report on Admissibility No. 11/02, Joaquín Hernández Alvarado et al. (Ecuador), February 27, 2002, paragraph 18. See also: IACHR, Report No. 64/01, Case 11.712, Leonel de Jesús Isaza Echeverry et al. (Colombia), April 6, 2001, paragraph 22. See also: I/A

Court H. R., Durand and Ugarte Case, Judgment of August 16, 2000, paragraph 117; I/A Court H. R., Cesti Hurtado Case, Judgment of September 29, 1999, paragraph 151. See also: IACHR, Report on the Situation of Human Rights in Chile, September 27, 1985, pp. 199-200, OEA/Ser.L/V/II.66 doc. 17; IACHR, Annual Report 1996, March 14, 1997, p. 688. IACHR, Report on the Situation of Human Rights in Ecuador, April 24, 1997, p. 36. IACHR, Report on the Situation of Human Rights in Brazil, September 29, 1997, p. 50.

20. The Commission has previously ruled that cases involving alleged violations of civilians' rights demand a criminal investigation intended to establish the facts and the corresponding responsibility. In the case at hand, the Commission has seen that the criminal justice authorities did not open an investigation to clear up the circumstances of Mickey Mendoza's death.

21. In consideration whereof, the claim is covered by the exception to the exhaustion of domestic remedies rule established by Article 46.2.b of the American Convention, which states that said exception shall apply when "the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them." Consequently, the prior exhaustion of domestic remedies requirement can be waived.

22. Furthermore, the invocation of Article 46.2's exceptions to the prior exhaustion rule bears an intimate relation with the possible violation of certain rights protected by the Convention, such as its guarantees of access to justice. However, by its very nature and purpose, Article 46.2 is a provision with autonomous content vis-à-vis the Convention's substantive precepts. So, the decision as to whether the exceptions to the exhaustion of domestic remedies rule are applicable in the case at hand must be taken before the merits of the case are examined and in isolation from that examination, since it depends on a different criterion from the one used to determine whether Articles 8 and 25 of the Convention were violated. It should be noted that the causes and effects that prevented the exhaustion of domestic remedies will be analyzed in the Commission's future report on the merits of the dispute, in order to determine whether or not they constitute violations of the American Convention.

2. Timeliness

23. Article 46.1.b of the American Convention requires that for a petition to be admitted by the Commission, it must be lodged within a period of six months from the date on which the alleged victim of a rights violation was notified of the final judgment.

24. In the case at hand, the State maintains that the petitioners' claim fails to satisfy that requirement since the National Police Court's final judgment was handed down on December 3, 2001, and, as the State believed, the petition was filed on November 15, 2002.

25. First, it should be noted that contrary to the State's claim, the petition was not received by the Commission on November 15, 2002 (the date on which it was originally transmitted to the State), but on July 22, 2002. Second, as established by the IACHR above, the petitioners' claim is covered by the exception to the exhaustion of domestic remedies requirement provided for in Article 46.2.b of the American Convention. Article 32 of the Commission's Rules of Procedure

states that in cases in which the exceptions to the prior exhaustion requirement are applicable, the petition must be presented within what the Commission deems to be a reasonable period of time. For that purpose, the Commission is to consider the date on which the alleged violation of rights occurred and the circumstances of each case.

26. In the case at hand, the facts described in the petition began on April 11, 1999, with the death of the child and, according to the claims, continued with a denial of justice, and the petition was received by the IACHR on July 22, 2002. Consequently, in consideration of the context and characteristics of the case, the Commission believes that the petition was lodged within a reasonable time and that the terms of Article 32 of the Commission's Rules of Procedure regarding the timeliness with which a petition must be lodged for it to be admissible can be taken as satisfied.

3. Duplication of proceedings and res judicata

27. The case file does not indicate that the substance of the petition is pending in any other international settlement proceeding or that it is substantially the same as another petition already examined by this Commission or any other international body. Hence, the requirements set forth in Articles 46.1.c and 47.d of the Convention have been met.

4. Characterization of the alleged facts

28. The State claims that the alleged facts have already been investigated by the police justice system and that, consequently, the IACHR lacks the competence to examine the claim, since that would mean it was acting as a "fourth instance." In this regard, it should be noted that the purpose of international proceedings before the agencies of the inter-American system and, in particular, before the Commission is not to establish the individual responsibility of State officials but to determine the responsibility of the State vis-à-vis the American Convention. Consequently, the IACHR finds that the petitioners' claims regarding the right to life and to a fair trial, together with the suffering endured by Mickey Mendoza Sánchez's next-of-kin, could tend to establish violations of the rights protected by Articles 4.1, 5.1, and 8.1 of the American Convention, in conjunction with Article 1.1 thereof, and so they therefore satisfy the requirements set out in Articles 47.b and 47.c of the treaty.

29. The Commission, under the principle of *iura novit curia*, believes that the events described in the petition could also tend to establish possible violations of Article 19 of the American Convention with respect to the minor child Mickey Alexis Mendoza Sánchez. In accordance with the rules for interpretation regarding human rights set out in the American Convention,[FN4] with the criteria established by the Inter-American Court of Human Rights regarding the tendency toward integrating the regional and universal systems,[FN5] and with the notion of a *corpus juris* for the protection of children,[FN6] the Commission will interpret the scope and content of the allegedly violated rights of the child Mickey Alexis Mendoza Sánchez in light of the terms of the United Nations Convention on the Rights of the Child.

[FN4] American Convention, Article 29, Restrictions Regarding Interpretation. “No provision of this Convention shall be interpreted as: [...] b. restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party.”

[FN5] I/A Court H. R., “Other Treaties” Subject to the Consultative Jurisdiction of the Court (Art. 64 of the American Convention on Human Rights), Advisory Opinion OC-1/82 of September 24, 1982, Series A No. 1, paragraph 41.

[FN6] I/A Court H. R., The Street Children Case (Villagrán Morales et al.), Judgment of November 19, 1999, Series C No. 63, paragraph 194; Case of the “Juvenile Reeducation Institute,” Judgment of September 2, 2004, Series C No. 112, paragraph 148; Case of the Gómez Paquiyauri Brothers, Judgment of July 8, 2004, Series C No. 110, paragraph 166. I/A Court H. R., Juridical Status and Human Rights of the Child, Advisory Opinion OC-17/02 of August 28, 2002, Series A No. 17, paragraphs 24, 37, 53.

30. Similarly, under the principle of *iura novit curia*, the Commission believes that the events described in the petition could also tend to establish possible violations of Article 25 of the American Convention with respect to the members of Mickey Alexis Mendoza Sánchez’s family.

31. Finally, the Commission believes that the petitioners have not presented evidence to support their claim regarding the alleged violation of the rights of the family set out in Article 17 of the American Convention. Consequently, that claim does not meet the requirements contained in Articles 47.b and 47.c of the American Convention, and the Commission therefore rules that claim inadmissible.

V. CONCLUSIONS

32. The Commission concludes that it is competent to hear the petitioners’ claims regarding the alleged violation of Articles 4.1, 5.1, 8.1, 19, and 25 of the American Convention, in conjunction with Article 1.1 thereof, and that those claims are admissible under the requirements established by Articles 46 and 47 of the American Convention. It further concludes that it must rule inadmissible the claim alleging a violation of Article 17 of the American Convention.

33. Based on the foregoing considerations of fact and law, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the claim admissible as regards the alleged violation of Articles 4.1, 5.1, 8.1, 19, and 25 of the American Convention, in conjunction with Article 1.1 thereof and to declare the claim inadmissible as regards the alleged violation of Article 17 of the American Convention.
2. To give notice of this decision to the Ecuadorian State and to the petitioners.
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 OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 5th day of the month of Augusto 2009.
(Signed): Luz Patricia Mejía Guerrero, President; Víctor E. Abramovich, First Vice-president; Felipe González, Second Vice-president; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, Florentín Meléndez, and Paolo Carozza, members of the Commission.