

**REPORT No. 159/11<sup>1</sup>**  
PETITON 737-03  
ADMISSIBILITY  
VICENTA SANCHEZ VALDIVIESO  
MEXICO  
November 2, 2011

**I. SUMMARY**

1. On September 12, 2003, the Inter-American Commission on Human Rights (hereinafter "Commission," "Inter-American Commission," or "IACHR") received a petition submitted by Isidro Santiago Sánchez (hereinafter "petitioner"), against the United Mexican States (hereinafter "State" or "Mexican State" or "Mexico") in which it is alleged that the human rights of his mother Vicenta Sánchez Valdivieso, a Zapotec indigenous woman, and a widow (hereinafter "alleged victim"), were violated because she was denied effective judicial protection.

2. The petitioner argues that the alleged victim turned to the judicial branch to resolve a labor dispute, but that after obtaining a judgment in her favor has been unable to have it enforced because the State has not applied the mechanisms provided for and necessary for doing so, and thereby has denied her access to effective judicial protection.

3. For its part, the State argues that the petition should be declared inadmissible because the facts do not make out any violation of human rights under the American Convention. It adds that the petitioner seeks to have the Commission sit as a court of fourth instance, and alleges that the facts presented stem from a conflict between private persons, the labor authorities being the appropriate ones to provide a solution.

4. Without prejudging on the merits of the complaint, after analyzing the parties' positions, and in compliance with the requirements set out at Articles 46 and 47 of the American Convention, the Commission decides to declare the case admissible for purposes of examining the alleged violation of the rights enshrined in Articles 5(1), 8(1), and 25, in conjunction with Article 1(1) of that treaty. The Commission also decides to notify the parties of this decision, and to publish it and include it in its Annual Report to the OAS General Assembly.

**II. PROCESSING BEFORE THE COMMISSION**

5. On September 12, 2003, the Commission received the petition and assigned it number 737-03. On September 24, 2004, it transmitted the pertinent parts of the petition to the State, asking that it submit its response within two months, in keeping with Article 30(2) of the IACHR's Rules of Procedure. The State's response was received on December 28, 2004. That communication was duly forwarded to the petitioner.

6. In addition, the IACHR received information from the petitioner through communications of February 15, 2005, January 10, 2007, August 1, 2007, October 25, 2007, May 21, 2010, and January 13, 2011. Those communications were duly transmitted to the State.

7. In addition, it received information from the State on July 20, 2005, August 17, 2005, June 15, 2007, September 21 and 26, 2007, May 28, 2010, and August 27, 2010, which were duly forwarded to the petitioner.

**III. THE PARTIES' POSITIONS**

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<sup>1</sup> In keeping with Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner José de Jesús Orozco Henríquez, of Mexican nationality, did not participate in the deliberations or decision in the instant case.

### A. The petitioner

8. The petitioner argues that the human rights of Vicenta Sánchez Valdivieso, a Zapotec indigenous woman, and a widow, have been violated by the lack of judicial protection from the Mexican State. He reports that in 1998, the alleged victim filed a labor action before the Local Conciliation and Arbitration Board, municipality of Tehuantepec, state of Oaxaca, against Mr. Mariano Santana López Santiago in his capacity as the employer of her deceased husband, Luciano Santiago Guerra. He adds that the action was filed with case number 165/98. He indicates that the proceeding concluded with the issuance of the corresponding decision, ordering the employer to pay \$97,827.60 Mexican pesos. The payment was required by the Board on March 2, 2000. In response to the failure to pay, the debtor's automobile was attached, and Ms. Esther Jiménez Guerra was named depositary of that asset.

9. According to the petitioner, on March 2, 2000, Mariano Santana López Santiago arrived in the company of several persons at the domicile of the depositary informing her that he had come to take his vehicle. Petitioner alleges that in response to the depositary's refusal to allow him to take the vehicle, Mr. Santana López pushed her, entered her home along with the persons who were accompanying him, and took the attached vehicle. One learning of this incident, the alleged victim and the depositary went to the prosecutorial offices in Juchitán (Agencia del Ministerio Público del Primer turno de Juchitán) to file a complaint for robbery. He notes that preliminary inquiry 104/2000 was opened, and the Judge for Criminal Matters of Juchitán issued an arrest warrant for Mariano Santana López Santiago, as appears in criminal case file 64/2000. As of that moment, he reports and documents that the alleged victim took any number of steps and actions, unsuccessfully, before state and federal offices, including the Office of the Attorney General, to request enforcement of the arrest warrant, and that she be paid the amount owed in keeping with the law.

10. Petitioner indicates that the authorities' argument for not enforcing the arrest warrant was that they could not find Santana López. Nonetheless, he notes that this argument is absurd because he ran as a candidate in the electoral district in the elections for federal legislator in 2003, for the Workers Party, and his campaign was widely publicized in the city of Juchitán. He alleges that Mariano Santana López Santiago is a political leader who has enjoyed impunity. He indicates that at the moment the complaint was presented to the IACHR, he was not a legislator and that the authorities protected him, enabled him to run for and be elected legislator, even though he should not have registered his candidacy because an arrest warrant for him was outstanding. He argues that the State did not give dates, places, or circumstances in which he says it carried out operations to arrest López Santiago.

11. He states that his mother, Vicenta Sánchez Valdivieso, lives alone, has no resources, and makes a living by selling natural fruit water. He notes that for years he has sought justice, and to that end, encloses the requests sent to the Office of the Regional Deputy Attorney of the Isthmus Resident in Santo Domingo Tehuantepec; to the Assistant Delegate of the Regional Office of the State Commission on Human Rights; and to the Constitutional Governor of the State of Oaxaca. However, he states, the Mexican authorities have ignored his demand since Mr. Santana López, as head of the Coalition of Workers, Peasants, and Students of the Isthmus (COCEI-PT), would have connections with authorities that would protect him.

12. In addition, he encloses a document signed by the alleged victim and sent to the Constitutional Governor of the State of Oaxaca complaining of being threatened by the defendant, Mariano Santana López, who, in his capacity as a Senator, told him that with his influence he could make one phone call and have him locked up.

13. In response to the State's argument that she should have pursued other remedies such as an extension of the attachment, the petitioner argues that the labor law in effect allows for expansion of the attachment, nonetheless, he indicates that she did not have to request it because the asset that was attached was stolen, and the authorities did not act in keeping with their obligations. In addition, he asserts that the attitude of the authorities, which was to protect the debtor, made other theoretical possibilities laughable.

14. In terms of the exhaustion of domestic remedies, the petitioner asserts that there is an unwarranted delay resulting from the evident protection of Mariano Santana López which has resulted in impunity to the detriment of the alleged victim's labor rights.

## **B. The State**

15. The State alleges that the petition should be found inadmissible because the alleged victim did not show that human rights set forth in the American Convention had been violated, and seeks to have the IACHR sit as a court of fourth instance. In addition, it asserts that the acts alleged stem from a conflict between private persons, and that the labor authorities are the appropriate ones for providing a solution.

16. The State agrees with the petitioner on the information on the labor action filed by the alleged victim against Mr. Mariano Santana López Santiago before the Special Board of Conciliation and Arbitration of Tehuantepec, Oaxaca. It also agrees with the petitioner with respect to the information on the content of the arbitral award and the attachment decreed of a vehicle belonging to the respondent.

17. It adds that when the attached vehicle was taken, on March 3, 2000, the alleged victim filed a complaint with the Office of the Attorney General of the State of Oaxaca, giving rise to preliminary inquiry 104(l)2000 for the crime of robbery. On March 27, 2000, the preliminary inquiry was placed before the local judge (Juez de Adscripción), who on April 12, 2000, issued an arrest warrant for Mr. López Santiago for his alleged responsibility "in the commission of the crime of robbery of vehicle with physical and moral violence."

18. According to the State, to carry out that order the Office of the Attorney General of Oaxaca implemented several operations, without success. The last time an effort was made to execute it in 2004, the authorities were unable to arrest him, for a group of approximately 300 persons, supporters of Mr. López Santiago, impeded it. In August 2004, he was elected to the local legislature, where he became a member of the Standing Committee on Labor and Social Security of the 59<sup>th</sup> Constitutional Legislature of the State of Oaxaca. On July 2, 2005, the person in charge of the command of Juchitán, Oaxaca, reported that it was not possible to carry out the arrest warrant because Mariano Santana López was a state legislator and enjoyed constitutional privilege, in keeping with Articles 108, 109, and 110 of the Constitution. It reports that the Constitution establishes a special procedure for those persons who have the privilege, in which one is removed from the position and the person responsible is subject to the action of the regular courts.

19. In addition, it indicates that Mr. López Santiago filed an *amparo* action against the Sixth District Court on September 30, 2005 (638/2005), which was resolved in his favor because the judge considered that the arrest warrant was not "backed by sufficient evidence to show his probable liability." Not in agreement with that resolution, the Public Ministry filed an appeal. On March 28, 2006, the First Chamber for Criminal Matters upheld the judgment appealed and the arrest warrant was voided.

20. The State asserts that the state of Oaxaca had made efforts to come up with an alternative solution to the dispute, and to be able to compensate the alleged victim for the damages, even though it is a dispute between private persons. Nonetheless, it argues that the alleged victim made exorbitant claims that impossible to satisfy.

21. It argues that the alleged victim has not exhausted domestic remedies related to the labor proceeding that gave rise to the dispute, because according to Article 965 of the Federal Labor Law, she was able to request an extension of the attachment order in the event that the attached assets were not sufficient to cover the amounts for which the award was ordered.

## **IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY**

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

22. The petitioner is authorized, in principle, by Article 44 of the American Convention to submit petitions to the Commission. The petition indicates as the alleged victim Vicenta Sánchez Valdivieso, with respect to whom the Mexican State undertook to respect and ensure the rights enshrined in the American Convention. As regards the State, the Commission indicates that Mexico has been a state party to the American Convention since March 24, 1981, when it deposited its instrument of ratification. Therefore, the Commission is competent *ratione loci* to take cognizance of the petition, insofar as it alleges violations of rights protected by the American Convention in the territory of Mexico, a state party to that treaty.

23. The Commission is competent *ratione temporis* insofar as the obligation to respect and ensure the rights protected in the American Convention was already in force for the State on the date on which the facts stated in the petition are alleged to have occurred. Finally, the Commission is competent *ratione materiae*, because the petition alleges possible violations of human rights protected by the American Convention.

**B. Exhaustion of domestic remedies and characterization of the facts**

24. Article 46(1)(a) of the American Convention provides that in order for a complaint presented to the Inter-American Commission to be admissible as per Article 44 of the Convention, one must have pursued and exhausted domestic remedies in keeping with generally recognized principles of international law. Article 47(b) of the same instrument establishes that the Commission shall declare a petition inadmissible when it does not state facts that tend to establish a violation of rights ensured in the Convention.

25. In the instant case, the IACHR observes that the alleged victim turned to the institutions of labor justice and obtained a decision in her favor in a labor proceeding. Subsequently, when the decision did not meet with compliance, the judicial branch proceeded to attach a vehicle owned by the debtor, Mr. López Santiago. Mr. López Santiago was said to have stolen the vehicle deposited, for which the alleged victim filed a criminal complaint with the authorities. The petitioner alleges that the Judicial Branch enabled the subject of the criminal complaint to evade justice, by inaction and corruption. The State, for its part, reports that it has not been possible to arrest Mr. López, and indicated that on one occasion, when police agents attempted to do so, a group of 300 supporters made it impossible. The parties indicate that the law offers the possibility of expanding the attachment order, yet the petitioner indicates that due to the circumstances, such a possibility is laughable.

26. For purposes of exhaustion of domestic remedies, the Commission observes that the alleged facts that gave rise to the instant petition find their origin in a dispute between private persons, but that the matter before the Commission has to do with the State's response through the judicial branch. Based on the analysis of the information submitted by both parties, the Commission finds that the alleged victim invoked the remedies available to her, and the alleged obstacles that made it impossible to complete the process through enforcement requires an analysis in the merits stage. Given that the proceeding is still pending, as the decision has not been enforced, the Commission applies the exception to the prior exhaustion rule based on unwarranted delay in the terms of Article 46(2)(c) of the American Convention.

**2. Time for submitting the petition**

27. Article 46(b) of the American Convention establishes that for a petition to be admissible by the Commission it must be filed within six months of the date on which the alleged victim has been notified of the final decision. In the petition under analysis, the IACHR has established that the exceptions to the exhaustion of domestic remedies apply as per Article 46(2)(c) of the American Convention. In this regard, Article 32 of the Commission's Rules of Procedure establishes that in those cases in which exceptions to the prior exhaustion rule apply, the petition must be submitted within a time that the

Commission considers reasonable. To that end, the Commission must consider the date on which the alleged violation of rights has occurred and the circumstances of each case.

28. In the instant case, the petition was received on September 12, 2003, during the enforcement process and when the alleged victim was waiting for the authorities to execute an arrest warrant that had been issued April 12, 2000, for the robbery of the vehicle that was going to be executed to enforce the decision handed down on March 2, 2000. Therefore, the Commission considers that the petition was presented within a reasonable time and that one should consider the admissibility requirement referring to the time for submission to have been satisfied.

### **3. Duplication of procedures and international res judicata**

29. It does not appear from the record that the subject matter of the petition is pending any other international proceeding for settlement, or that it reproduces a petition already examined by this or any other international organization. Therefore, the requirements established at Articles 46(1)(c) and 47(d) of the Convention have been satisfied.

### **4. Characterization of the facts alleged**

30. The Commission considers that this stage of the procedure is not for determining whether there were alleged violations to the detriment of the alleged victim. For purposes of admissibility, the IACHR should determine, at this time, only whether facts are stated which, if proven, would constitute violations of the American Convention, as stipulated by Article 47(b) thereof, and whether the petition is “manifestly groundless” or “obviously out of order,” as per Article 47(c). The criterion for determining whether these requirements have been met is different from that required for ruling on the merits of a complaint. The IACHR must perform a *prima facie* evaluation and determine whether the complaint makes out an apparent or potential violation of a right guaranteed by the American Convention, but not whether such a violation exists.<sup>2</sup> In this stage, a summary analysis is called for that does not imply prejudging or giving an early opinion on the merits. The Rules of Procedure of the Inter-American Commission, on establishing an admissibility phase and a merits phase, reflect this distinction between the evaluation that the Inter-American Commission must make to find a petition admissible and that required to establish whether a violation imputable to the state has been committed.<sup>3</sup>

31. Neither the American Convention nor the IACHR Rules of Procedure require a petitioner to identify the specific rights allegedly violated by the State in the matter brought before the Commission, although petitioners may do so. It is for the Commission, based on the system's jurisprudence, to determine in its admissibility report which provisions of the relevant Inter-American instruments are applicable and could be found to have been violated if the alleged facts are proven by sufficient elements.

32. The petitioner argues that the State violated the human rights of the alleged victim because it denied effective judicial protection on failing to take the measures necessary to enforce a judgment, including an arrest warrant handed down by the courts of justice. The State, for its part, argues that one cannot identify elements that tend to establish a violation of the American Convention.

33. Based on the information and documents produced by both parties, the IACHR considers that the facts alleged with respect to the alleged failure of the State to adopt the measures required for enforcing the judgment, due supposedly to the competent authorities having allowed the person in question to evade justice, or due to pressure or corruption, could tend to establish a violation of the rights

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<sup>2</sup> See IACHR, Report No. 128/01, Case 12,367, *Mauricio Herrera Ulloa and Fernán Vargas Rohmoser of the Diario “La Nación”* (Costa Rica), December 3, 2001, para. 50; Report No. 4/04, Petition 12,324, *Rubén Luis Godoy* (Argentina), February 24, 2004, para. 43; Report No. 32/07, Petition 429-05, *Juan Patricio Marileo Saravia et al.* (Chile), April 23, 2007, para. 54.

<sup>3</sup> See IACHR, Report No. 31/03, Case 12,195, *Mario Alberto Jara Oñate et al.* (Chile), March 7, 2003, para. 41; Report No. 4/04, Petition 12,324, *Rubén Luis Godoy* (Argentina), February 24, 2004, para. 43; Petition 429-05, *Juan Patricio Marileo Saravia et al.* (Chile), April 23, 2007, para. 54; Petition 581-05, *Víctor Manuel Ancalaf LLaupe* (Chile), May 2, 2007, para. 46.

enshrined in Articles 8(1) and 25 of the American Convention, in connection with Article 1(1) of that instrument, in the person of the alleged victim and her family members.

34. In addition, it considers that the allegations on purported threats and pressures to the detriment of the alleged victim could tend to establish a violation of the right guaranteed in Article 5(1) of the American Convention, in conjunction with Article 1(1) of that instrument.

## **V. CONCLUSIONS**

35. Based on the considerations of fact and law set forth above, and without prejudging on the merits, the Inter-American Commission concludes that the petition satisfies the admissibility requirements set out at Articles 46 and 47 of the American Convention and accordingly

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,**

#### **DECIDES:**

1. To declare the petition admissible in relation to the alleged violations of the rights protected at Articles 5(1), 8(1), and 25 of the Convention, in conjunction with Article 1(1) of that treaty, with respect to the alleged victim and her family members.
2. To notify the parties of this decision.
3. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 2nd day of the month of November, 2011.  
(Signed): Dinah Shelton, President; Rodrigo Escobar Gil, Second Vice-President; Paulo Sérgio Pinheiro, Felipe González, Luz Patricia Mejía Guerrero, and María Silvia Guillén, Commissioners.