

REPORT No. 67/12¹
PETITION 728-04
ADMISSIBILITY
ROGELIO MORALES MARTÍNEZ
MEXICO
July 17, 2012

I. SUMMARY

1. On August 12, 2004, the Inter-American Commission on Human Rights (hereinafter “Commission,” “Inter-American Commission,” or “IACHR”) received a petition submitted by R.G.L.² (hereinafter “petitioner”), in representation of Rogelio Morales Martínez, an indigenous man from the Popoluca people (hereinafter “alleged victim”). The petition was filed against the United Mexican States (hereinafter “the State,” “the Mexican State,” or “Mexico”) for failing to provide the alleged victim an interpreter so as to be able to defend himself and understand the accusations against him, as well as to be able to mount an effective defense in a criminal proceeding against him.

2. The petitioner alleges that the Mexican State is responsible for violating the right enshrined in Article 8 (judicial guarantees) of the American Convention on Human Rights (hereinafter “Convention” or “American Convention”), to the detriment of the alleged victim.

3. For its part, the State argues that the petition should not be admitted because the petitioner did not exhaust domestic remedies. In addition, it alleges that the petitioner is seeking to have the IACHR sit as a court of fourth instance.

4. Without prejudging on the merits, after analyzing the parties’ positions and in keeping with the requirements of Articles 46 and 47 of the American Convention, the Commission decides to find the case admissible for the purposes of examining the alleged violation of the rights enshrined in Articles 7, 8, 24, and 25 of the American Convention, in relation to Article 1(1) of that international instrument, to the detriment of Rogelio Morales Martínez. The Commission also decides to notify the parties of this decision, and to publish it and include it in its Annual Report to the General Assembly of the OAS.

II. PROCESSING BEFORE THE COMMISSION

5. On August 12, 2004, the Commission received the petition and assigned it number 728-04. On May 23, 2008, it transmitted the pertinent parts of the petition to the Mexican State, asking that it submit its response within two months, in keeping with Article 30(2) of the Commission’s Rules of Procedure. The State sent its response on July 25, 2008. That communication was duly forwarded to the petitioner.

6. In addition, the IACHR received information from the State on December 24, 2009, and on June 2, 2010. Those communications were duly forwarded to the petitioner.

Preliminary issue as to processing of the petition

7. The State argues in the instant case that the delay between receipt of the petition and its processing “has gone beyond any limit of time and reasonableness,” for the petition was forwarded to the State four years after it was submitted by the petitioner. It adds that this renders the State unable to defend itself, and that it does not matter whether the delay is the result of lack of diligence by the

¹ 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.

² The petitioner asked to keep his identity confidential in the initial petition filed with the IACHR on August 12, 2004.

petitioners or unwarranted delay on the part of the Commission. Accordingly, it asks that the IACHR consider the possibility of declaring the petition out of order.

8. The IACHR, by communication of December 14, 2009, told the State that “the time elapsed from the time the Commission receives a complaint until it is forwarded to the State, according to the rules of the inter-American human rights system, is not, in itself, a reason for deciding to archive the petition.” In addition, it indicated that the Commission has indicated that “in the processing of individual cases before the Commission, there is no concept of expiry of jurisdiction as an *ipso jure* measure merely because of the passage of time.”³ Notwithstanding, the IACHR indicated that it will evaluate the State’s position, the information submitted by the petition, and the impact of the delay on the case, in the pertinent report on the petition.

9. In this regard, the IACHR observes that as of the date of the drafting of this report, the facts that gave rise to the claim subsist, thus it reiterates that in the process of individual cases before the IACHR, there is no concept of expiry of jurisdiction as a measure by operation of law due to the passage of time. In addition, any information provided has been forwarded to both parties for observations they deem pertinent, in keeping with the relevant provisions of the Convention and the Rules of Procedure.

III. THE PARTIES’ POSITIONS

A. The petitioner

10. The petitioner alleges that Rogelio Morales Martínez, an indigenous man of Popoluca ethnicity, resident of the indigenous community of Amamaloya, in the municipality of San Pedro Soteapan, state of Veracruz, was accused in 2002 of the crime of homicide of Matías Gutiérrez Cruz.

11. The petitioner notes that on April 28, 2002, at nine o’clock at night, he was removed from his home by officers of the police of the State Public Security Agency, without any arrest or search warrant. He indicates that he was held the whole night and that he was interrogated by police agents until three o’clock in the morning of April 29, when he was turned over to the Lead Investigative Agent of the state courts. He indicates that he was interrogated without the presence of an interpreter – he did not speak Spanish – and that the authorities made him sign a statement without reading it.

12. The petitioner further states that during the reading of the charges by the prosecutor, the alleged victim did not have any defense counsel or person of trust to assist him, and that he was assigned a law intern as his defender.

13. By agreement of the prosecutor, the afternoon of April 29 the alleged victim was taken to his community to reconstruct the facts and was not assisted by an interpreter. Nonetheless, the Public Ministry decided to bring criminal charges against him and referred him to the First Court of First Instance of the District of Acayucan, Veracruz, on April 30, 2000.

14. He argues that in Court it was detected that the alleged victim did not speak Spanish, accordingly he was assigned an interpreter, for that procedure and for the entire trial, who informed him of the offense of which he was accused, the facts, and the statement that had been given and signed before the prosecutor investigating the matter. The alleged victim stated through his interpreter that the statement to the Public Ministry was not in keeping with the facts of which he was accused; he refused to ratify that statement, and instead gave a new version of the facts. Nonetheless, despite not ratifying the statement given to the investigating organ, the court issued an order for him to be held in custody until the conclusion of the trial, giving weight to the statement that was not ratified. This decision stands, having been appealed and ratified by the Fifth Chamber of the Superior Court of Justice of the State of Veracruz.

³ See IACHR, Report No. 33/98, Case 10,545, Clemente Ayala Torres et al. v. Mexico, May 15, 1998, para. 28; IACHR, Report No. 68/08, Case 12,671, Ernesto Trevisi v. Argentina, October 16, 2008, para. 26.

15. He indicates that on October 10, 2002, the First Judge of First Instance, based in the city of Acayucan, Veracruz, taking into account the prosecutorial statement given before the Public Ministry, and without giving consideration to what was said in the Criminal Court, handed down a judgment against the alleged victim, and imposed a penalty of 19 years of prison, a fine of sixty days minimum salary, and the payment of reparation for the harm. In response to the conviction he filed a direct *amparo* action that was granted by the Second Collegial Court for Criminal Matters of the Seventh Circuit based in Boca del Río.

16. In response to the resolution of the Court on August 29, 2003, he states that the Judges of the Third Chamber of the Superior Court of Justice of the State modified the conviction appealed, reducing the penalty to 18 years and 9 months, a fine of 60 days minimum salary, and the payment of reparation for the harm. He indicates that no in-depth study was done on the laws and guarantees violated to his detriment. Not content with that resolution, the alleged victim filed a new *amparo* remedy. By judgment of July 7, 2004, the Second Collegial Court for Criminal Matters ruled to dismiss the *amparo* proceeding.

17. According to the information provided by the petitioner, in several stages of the proceeding the lack of interpretation was challenged, and likewise the facts related to the alleged arbitrary detention, among other due process-related issues. Based on the domestic remedies described in the foregoing paragraphs, domestic remedies were exhausted.

B. The State

18. The State argues that the petition should not be admitted because the petitioner failed to exhaust domestic remedies. In addition, it argues that the petitioner seeks to have the IACHR sit as a court of fourth instance.

19. Contrary to what is noted by the petitioner with respect to the alleged victim having been arrested on April 28, 2002, at night, to interrogate him, the State indicates that Rogelio Morales Martínez was arrested along a dirt road at 3:30 a.m. on April 29, 2002, and brought before the prosecutorial agent investigating the matter. At 6:30 a.m., once it was determined that arresting and holding him were legal, the constitutional term of 48 hours began to run for a determination on the investigation before a judicial authority.

20. On April 30, 2002, after several investigative steps, it was decided to bring criminal charges against the alleged victim for the likely commission of the crime of aggravated homicide and the initial sworn statement was assigned to the Judge of First Instance of the Judicial District of Acayucán, Veracruz. Disagreeing with that prosecutorial determination, the alleged victim filed an appeal before the Fifth Chamber of the Superior Court of Justice, which upheld it.

21. The State reports that on October 10, 2002, the Judge of First Instance of the Judicial District of Acayucán handed down a guilty verdict against the alleged victim, and imposed a penalty of 19 years prison, a fine of 60 days minimum salary, and the obligation to make reparation for the harm. The alleged victim appealed that conviction; the appellate court upheld the trial court's verdict.

22. On April 10, 2003, Mr. Morales filed an *amparo* motion. On August 29, 2003, the Third Superior Chamber of Justice of the State modified the conviction handed down and reduced the penalty to 18 years and 9 months. Displeased with that decision, Mr. Morales brought a new *amparo* action that was dismissed on July 7, 2004 by the Second Collegial Court for Criminal Matters of the Seventh Circuit of Boca del Río, Veracruz. It states that on December 13, 2006, the federal judicial authority dismissed *in limine* the last *amparo* action pursued by Mr. Morales Martínez, without it being challenged by the alleged victim.

23. The State also argues that the petitioner is seeking to have the IACHR sit as a court of fourth instance. It asserts that in no way has it hindered or failed to guarantee the right of the alleged victim to appeal any judicial determination. Proof of this is that he had access to various judicial remedies

by which he was even able to appeal his conviction, and the penalty was reduced. This indicates that the judicial determination as to the criminal liability of the alleged victim is in keeping with the judicial guarantees and protections established in the Convention.

24. According to the State, Mr. Rogelio Morales is presently confined in the Center for Social Readaptation in the city of Xalapa, Veracruz, for having committed the crime of homicide. It also argues that at the same time charges were filed against him in criminal case 45/2002 for the crime of carrying a weapon without a license, in which he was found guilty, and a prison term of three years was imposed, which ended on May 27, 2005. The State does not say anything in its response on the arguments related to the lack of interpretation or lack of defense counsel. Nonetheless, it notes that among the alleged victim's activities at the prison, he helps in a Catholic group, he belongs to a group of alcoholics anonymous, and he is taking classes corresponding to the first year of secondary school; these activities, the State notes, by their nature can only be conducted in the Spanish language.

25. As regards the exhaustion of domestic remedies, it argues that one observes a failure to exhaust domestic remedies in two distinct episodes, at the moment the petition was filed with the IACHR, which is shown by the subsequent filing of domestic remedies by the petitioner, and second, two years later, on not having pursued any remedy – specifically the motion for review – against the last judicial determination issued internally, in 2006.

IV. ANALYSIS OF ADMISSIBILITY

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

26. The petitioner is authorized, in principle, by Article 44 of the American Convention to present petitions to the Commission. The petition notes as the alleged victim an individual person 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 notes that Mexico has been a state party to the American Convention since March 24, 1981, the date on which it deposited its instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition. In addition, the Commission is competent *ratione loci* to take cognizance of the petition, insofar as it alleges violations of rights protected by the American Convention, which are alleged to have taken place within the territory of Mexico, a state party to that treaty.

27. 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 as of the date when the facts alleged in the petition are said 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. Other requirements for the admissibility of a petition

1. Exhaustion of domestic remedies

28. Article 46(1)(a) of the American Convention provides that in order for a complaint lodged with the Inter-American Commission in keeping with Article 44 of the Convention to be admissible, one must have pursued and exhausted domestic remedies, in keeping with generally recognized principles of international law. This requirement has the purpose of allowing the national authorities to hear the alleged violation of a protected right and, if appropriate, to have an opportunity to resolve it before it is heard by an international body.

29. In the instant case, the State argues that the petitioner did not exhaust domestic remedies, first when he filed the petition with the IACHR, which is shown by the subsequent pursuit of domestic remedies, and, two years later, on not having pursued a remedy against the final domestic

judicial determination dismissing the *amparo* action in 2006. The State notes that the petitioner could have filed a motion for review. For his part, the petitioner argues that domestic remedies were exhausted.

30. Based on the information provided by the parties, the IACHR observes that by judgment of October 10, 2002, by the First Judge of First Instance of Acayucán in criminal proceeding 120/2002, Rogelio Morales Martínez was found criminally liable for the crime of aggravated homicide and was sentenced to a prison term of 19 years, a fine of 60 days minimum salary, as well as the payment of reparation. The alleged victim filed an appeal that was ruled on by the Third Chamber of the Superior Court of Justice of the State on November 29, 2002, upholding the conviction.

31. In response to that judgment the alleged victim filed an *amparo* action. The Third Superior Chamber of Justice of the State, on April 10, 2003, amended the sentence imposed to 18 years and 9 months prison.

32. Mr. Morales brought a new *amparo* proceeding, which according to the State was dismissed on July 7, 2004, by the Second Collegial Court for Criminal Matters of the Seventh Circuit of Boca del Río, Veracruz. The petitioner has not controverted that assertion. Subsequently, according to the State, on December 13, 2006, the federal judicial authority dismissed *in limine* the last *amparo* action filed by Mr. Morales Martínez, without this action being challenged by the alleged victim. That assertion has not been controverted by the petitioner.

33. The IACHR also observes that in different stages of the process, such as, for example, in response to the court order to hold the alleged victim pending the outcome of the trial, before the first conviction, and in the third *amparo* filed, the alleged victim challenged the alleged lack of interpretation, as well as the facts related to the alleged arbitrary detention, among other considerations related to due process. In addition, it observes that the alleged victim exhausted regular remedies and also filed three *amparo* actions, one of which reduced his sentence, another that was dismissed, and a third one on which he did not prevail.

34. In this respect, the IACHR has established that the requirement of exhausting domestic remedies does not mean that the alleged victims necessarily have the obligation to exhaust all remedies available to them. In effect, the Inter-American Court has held: "A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance."⁴ Both the Court and the Commission have repeatedly held that "...the rule which requires the prior exhaustion of domestic remedies is designed for the benefit of the State, for that rule seeks to excuse the State from having to respond to charges before an international body for acts imputed to it before it has had the opportunity to remedy them by internal means."⁵ Accordingly, if the alleged victim raised the issue by one of the valid and adequate alternatives in the domestic legal order and the State had the opportunity to remedy the situation in its jurisdiction, the purpose of the international provision is met.⁶

35. Taking into consideration the sequence of remedies pursued and exhausted, and based on the terms of Article 46 of the Convention, the Commission concludes that the requirement of prior exhaustion of domestic remedies has been met. Accordingly, the Inter-American Commission verifies that the remedies provided for in Mexican legislation have been exhausted and decides that the petition analyzed meets the requirement set forth at Article 46(1)(a) of the Convention.

2. Time period for submitting a petition

⁴ I/A Court H.R., *Case of Velásquez Rodríguez*. Judgment of July 29, 1988. Series C No. 4, paras. 64 and 66; I/A Court H.R., *Case of the Mayagna (Sumo) Community of Awás Tingni*. Judgment of August 31, 2001. Series C No. 79, para. 111; I/A Court H.R., *Case of Maritza Urrutia*. Judgment of November 27, 2003. Series C No. 103, para. 117.

⁵ I/A Court H.R., *In the matter of Viviana Gallardo et al.* Series A No. G 101/81, para. 26.

⁶ IACHR, Report No. 57/03 (Admissibility), petition 12,337, Marcela Andrea Valdés Díaz v. Chile, October 10, 2003, para.

36. According to Article 46(1)(b) of the Convention, for a petition to be admitted it must be filed within six months of the date on which the petitioner was notified of the final decision at the domestic level. The six-months rule guarantees certainty and juridical stability once a decision has been made.

37. In the instant case, by judgment of July 7, 2004, the ruling was made in the second *amparo* proceeding, and the petition was received on August 12, 2004. According to information provided by the State on December 13, 2006, the federal judicial authority dismissed *in limine* the third *amparo* action brought subsequently by Mr. Morales Martínez. Accordingly, the IACHR finds that this requirement has been met.

3. Duplication of procedures and international *res judicata*

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

4. Characterization of the facts alleged

39. The Commission considers that it is not appropriate at this stage of the proceeding to decide whether the alleged violations occurred, to the detriment of the alleged victims. For the purposes of admissibility, the IACHR should resolve at this moment only whether facts are stated which, if proven, would tend to establish violation of the American Convention, as stipulated by Article 47(b) of the Convention, and whether the petition is "manifestly groundless" or "obviously out of order," as per Article 47(c).

40. Neither the American Convention nor the Rules of Procedure of the IACHR require the petitioner to identify the specific rights that are alleged to have been violated by the State in the matter submitted to the Commission, although the petitioners may do so. It is up to the Commission, based on the case-law of the system, to determine in its admissibility reports what provisions of the relevant inter-American instruments apply and whether their violation could be established if the facts alleged are proven by sufficient elements.

41. In this sense, the IACHR considers that the facts alleged, if proven, tend to establish possible violations of the rights guaranteed at Articles 7, 8, 24, and 25 of the American Convention, in connection with Article 1(1) of said international instrument.⁷

V. CONCLUSIONS

42. The Commission concludes that it is competent to hear the arguments on the merits of this case and that the petition is admissible under Articles 46 and 47 of the American Convention, and it decides to continue with the analysis on the merits in relation to the alleged violation of Articles 7, 8, 24, and 25 of the American Convention, in connection with Article 1(1) of that international instrument, with respect to Rogelio Morales Martínez.

43. Based on the foregoing arguments of fact and law,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

⁷ See IACHR, Report 49/08, Petition 261-04, Ricardo Uacán Seca (Mexico), July 24, 2008.

1. To find the instant petition admissible in relation to the alleged violations of the rights recognized in Articles 7, 8, 24, and 25 of the American Convention, in keeping with Article 1(1) of the same treaty to the detriment of Rogelio Morales Martínez.

2. To notify the parties of this decision.

3. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 17th day of the month of July 2012.
(Signed): Tracy Robinson, First Vice-President; Dinah Shelton, Rodrigo Escobar Gil, Rosa Maria Ortiz, and Rose-Marie Belle Antoine, Commissioners.