

REPORT No. 121/12
PETITION 764-03
INADMISSIBILITY
ROLANDO ERNESTO GÓMEZ GARCÍA AND BERNARDA LILIANA GÓMEZ GARCÍA
HONDURAS
November 13, 2012

I. SUMMARY

1. On September 19, 2003, the Inter-American Commission on Human Rights (hereinafter the "Commission", the "Inter-American Commission" or the "IACHR") received a petition that Ms. Bernarda Liliana Gómez García and Mr. Rolando Ernesto Gómez García (hereinafter "the petitioners" or "the alleged victims") lodged against the State of Honduras (hereinafter the "State" or the "Honduran State"). There they alleged the State's responsibility for violations of the petitioners' rights to private property, due process of law, and judicial guarantees.

2. The State contends that the petition should be declared inadmissible on the grounds that the existing remedies under Honduran law were not exhausted. It further asserts that this is a dispute between private parties and the fact that the petitioners did not win their case in the domestic courts does not mean that a violation of the American Convention on Human Rights was committed.

3. After examining the parties' positions, the Commission concludes that it has competence to take up the petition under examination and that the case is inadmissible under articles 46 and 47 of the American Convention. The Commission also decides to notify the parties of this decision, to publish it and include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCESSING WITH THE COMMISSION

4. The Commission received the petition on September 19, 2003, and classified it as number 764/03. On October 17, 2006, the Commission requested additional information from the petitioners. On November 16, 2006, the petitioners sent a brief expanding upon their original petition. On January 4, 2007, the Commission forwarded the pertinent parts to the State and gave it two months in which to submit its response, in keeping with Article 30(3) of the Commission's Rules of Procedure. The State submitted its response on April 23, 2007.

5. The petitioners submitted additional information on July 2, 2007, August 29, 2007, January 2, 2008, June 17, 2008, December 24, 2008, July 14, 2010, September 16, 2010, and November 24, 2010. Those communications were duly forwarded to the State.

6. The State presented additional information on April 23, 2007, November 2, 2007, September 8, 2008, September 15, 2008, November 8, 2008 and August 3, 2009. Those communications were duly forwarded to the petitioners.

A. Position of the petitioners

7. The petitioners claimed to have been named heirs *ab intestato* of their father Fausto Gómez Turcios, to the property called "El Chile or Cerro Grande". The petitioners allege that on January 6, 1997, a third party, José Hasbun Touche, filed suit against them seeking nullification of their inheritance rights (Civil Suit 1419) in the Second Civil Court of the Tegucigalpa Judicial District, Central District Municipality, department of Francisco Morazán (hereinafter the "Second Civil Court of Tegucigalpa").

8. The petitioners assert that their cousins, the siblings Fernando, Raúl, Petrona, Margarita and María Victoria Gómez Zelaya, were also sued on December 3, 1990 in another case (Civil Suit 2714), again by the same third party (José Hasbun Touche) and with respect to the very same property. The suit was brought in the Second Civil Court of Tegucigalpa seeking to have their inheritance rights declared null and void.

9. The petitioners report that they received a legal summons and subpoena in the suit brought against them. However, they contend that on April 9, 1997, their attorney mistakenly sent their response to the First Civil Judge. They maintain that as a result, the Court refused to accept their brief, a decision that they asked be reversed and then appealed. They allege that a number of "suspicious court maneuvers" had occurred and note that on January 9, 1998, the Judge of the Second Civil Court of Tegucigalpa declared Rolando and Bernarda Gómez to be in contempt of court and ordered that they be notified (of measures, writs and verdicts) by way of the court notice board, which the petitioners argue would be a violation of their right to be notified, their right to a hearing and, ultimately, their right to due process.

10. The petitioners observe that at the request of plaintiff José Hasbun Touche, on January 13, 1999 the two suits (1419 and 2714) were joined for purposes of hearing by the Second Civil Court of Tegucigalpa. That same day, January 13, 1999, petitioners Rolando and Bernarda Gómez requested that the suits be heard separately, a request to which the court allegedly acceded.

11. The petitioners observe that on April 30, 1999 Hasbun Touche had allegedly filed a brief setting out his evidence. The Court admitted the brief on June 9, 1999. According to the petitioners, this was a violation of Article 262 of the Procedural Code, because by the time the court allegedly admitted the evidence, the evidentiary phase of the proceedings had already ended. They maintain that their attorney therefore requested that expiration of the first evidentiary phase be declared and the judge acceded to the request. They further maintain that on October 12, 1999, the plaintiff requested that the June 9, 1999 order (by which the evidence was admitted) be amended or altogether replaced. They further allege that the judge acceded to the plaintiff's request. On November 1, 1999, the petitioners had allegedly requested that the proceedings be declared null and void owing to the irregularities that had occurred.

12. The petitioners report that on January 25, 2000, the Court nullified their inheritance rights and cancelled their claims to the property being litigated. They contend that they filed an appeal and that on January 10, 2001, the Court of Appeals upheld the lower court's ruling. The petitioners state that on November 1, 2001, they filed a petition seeking amparo relief, based on the following: a) invalid procedural notification of the final verdict; b) the fact that notification of a final verdict was legally impossible as a petition of *amparo* was pending with the Supreme Court challenging the decision. They point out that the ruling on their November 1, 2001 amparo petition was delivered on November 17, 2003 and that the Supreme Court did not decide in their favor but instead confirmed the ruling that had nullified their inheritance rights.

13. The petitioners also allege that Mr. Hasbun Touche brought suit 2714 against their cousins -the Gómez Zelaya siblings- seeking nullification of their inheritance rights to a property called "El Chile or Cerro Grande." However, a special cassation appeal was filed in that suit and the decision on the cassation appeal found that the nullification of inheritance rights that Mr. Hasbun Touche was seeking was time-barred by the statute of limitations. The petitioners claim that the decision on the special

cassation appeal supported their own property claims. However, they also contend that because the decision on the cassation appeal has not been carried out, the property has not been restored to them.

14. The petitioners claim that as a consequence of this litigation, they have been hounded by police, brought up on charges of fraud, usurpation and sedition. They also claim to have been the victims of personal attacks ordered by Mr. Hasbun Touche.

B. Position of the State

15. The State's position is that the petition is inadmissible because the petitioners failed to exhaust the domestic remedies available. It also argues that there is no reference to any violations of Convention-protected rights, since the petitioners have alleged "violation of inheritance rights", "criminal assaults" and "violation of constitutional rights", but no violation of any Convention-protected right.

16. The State denies the petitioners' assertion of a supposed "vast conspiracy against them, orchestrated by the plaintiff in the suit, Mr. José Hasbun Touche" and maintains that Mr. Hasbun does not control either the judicial branch of government or the National Police, which are both independent.

17. The State reasons that ownership of the disputed properties is a matter that must be decided in the competent civil courts, at the initiative of the interested parties. It argues that if the petitioners believe that they have a ruling in their favor, it must be executed in accordance with Honduran law. The State contends that this is a private dispute between the Gómez family and Mr. Hasbun. It also believes that the record shows that the petitioners have had the opportunity to avail themselves of the remedies that the law prescribes and to assert their rights in accordance with Honduran law.

18. As for the persecution that the alleged victims claim to be suffering, the State maintains that the criminal charges against the petitioners have been brought in accordance with the legally established procedures for private persons and as a result of supposed criminal activities that would have to be proved when the time comes. It claims that the criminal cases were dismissed in the alleged victims' favor, because of procedural inactivity. The State therefore denies the persecution that the petitioners claimed to be suffering.

IV. ANALYSIS ON ADMISSIBILITY

A. Competence *ratione personae*, *ratione loci*, *ratione temporis* and *ratione materiae*

19. The petitioners are authorized to lodge petitions with the Commission under Article 44 of the American Convention. The alleged victims named in the petition are persons whose rights under the American Convention the State has undertaken to respect and ensure. As for the State, the Commission notes that Honduras has been a State party to the Convention since September 8, 1977, the date on which it deposited its instrument of ratification. Therefore, the Commission has competence *ratione personae* to examine the petition.

20. The Commission has competence *ratione materiae* because the petition concerns alleged violations of human rights protected by the American Convention. It also has competence *ratione temporis* because the obligation to respect and ensure the rights protected under the American Convention was already in force for the State on the date on which the alleged violations of Convention-protected rights were said to have occurred. The Commission also has competence *ratione loci* to examine the petition, since it alleges violations of rights protected under the American Convention, said to have occurred within the territory of a State party to the Convention.

B. Admissibility Requirements

1. Exhaustion of domestic remedies

21. Article 46(1)(a) of the American Convention provides that in order for a complaint submitted to the Inter-American Commission under Article 44 of the Convention to be admissible, the remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law.

22. In the instant case, the petitioners are claiming violations of the American Convention in the case of the alleged irregularities committed in a civil suit brought to have their inheritance rights nullified. The suit was litigated before the Second Civil Judge of Tegucigalpa. They also claim that the ruling delivered in a special cassation appeal -which supposedly was in their favor- has never been fully executed.

23. From what the parties are alleging, the Commission observes that Mr. Hasbun Touche filed suit in the Second Civil Court of Tegucigalpa on January 6, 1997, seeking nullification of the petitioners' inheritance rights. On April 9, 1997, the attorney for the petitioners mistakenly sent their response to the First Civil Judge, as a result of which the court declared their brief out of order. The petitioners state that they filed to have this decision reversed, and then filed an appeal. On January 25, 2000, the decision delivered was not in the petitioners' favor. They appealed that decision, which was confirmed on January 10, 2001. A petition of *amparo* that the petitioners filed on November 1, 2001, was denied on November 17, 2003.

24. The petitioners state that the domestic remedies were exhausted with the decision on the petition seeking *amparo* relief, delivered on November 17, 2003, which upheld the suit that Mr. Hasbun Touche brought seeking nullification of the petitioners' inheritance rights. The State, for its part, alleges that the necessary domestic remedies were not exhausted as the petitioners could have filed a cassation appeal.

25. As for the State's argument to the effect that the petitioners did not exhaust the special cassation appeal, the IACHR would point out that the alleged victims filed an appeal and a petition for *amparo* relief. The Commission has written that the rule requiring exhaustion of domestic remedies does not mean that alleged victims have an obligation to exhaust all available remedies. Time and time again, both the Court and the Commission have 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."¹ Therefore, if an alleged victim raised the issue by any lawful and appropriate alternative under the domestic juridical system and the State had the opportunity to remedy the matter within its jurisdiction, then the purpose of the international rule has thus been served.²

26. In the instant case, the petitioners filed the available regular remedies and it is not obvious –and the State has not explained- why it was necessary to invoke any other remedy. As for the criminal actions brought against the alleged victims, the parties indicated that they were dismissed in the alleged victims' favor, due to procedural inactivity.

27. The Commission therefore concludes that where this petition is concerned, the requirement set forth in Article 46(1)(a) of the Convention is satisfied by the November 17, 2003 decision delivered on the petition of *amparo*.

28. The IACHR observes that the petitioners did not present any information on the internal remedies exhausted in connection with their claims of alleged irregularities on the part of the courts and the alleged persecution and threats to which the petitioners have supposedly been subjected.

¹ I/A Court H.R., *In the Matter of Viviana Gallardo et al.* Series A No. G 101/81, paragraph 26.

² IACHR, Report No. 57/03, petition 12.337, Marcela Andrea Valdés Díaz (Chile), October 10, 2003, paragraph 40.

29. As for cassation decision 669-1, delivered in the course of suit 2714 and which the petitioners claim would recognize their property rights, the Commission notes that the petitioners were not party to that suit and hence the cassation decision has no legal implications when it comes to determining the question of exhaustion of domestic remedies.

2. Deadline for filing

30. Article 46(1)(b) of the Convention provides that for a petition to be declared admissible, it must be lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment that exhausted the remedies under domestic law.

31. As observed in the preceding section, the domestic remedies were exhausted with the November 17, 2003 decision on the petition of amparo, which was subsequent to the date on which the petition was filed with the IACHR. Here, fulfillment of the requirement set forth in Article 46(1)(b) of the Convention is intimately linked to the exhaustion of domestic remedies and has therefore been satisfied.

3. Duplication of international proceedings

32. Nothing in the case file suggests that the subject matter of the petition is pending with another international proceeding for settlement or is substantially the same as one already examined by this or some other international organization. Therefore, the requirements established in articles 46(1)(c) and 47(d) of the Convention must be deemed satisfied.

4. Colorable claim

33. For admissibility purposes, the IACHR must decide whether the allegations state facts that could tend to characterize a violation of the American Convention, as stipulated in Article 47(b) thereof, and whether the petition is “manifestly unfounded” or “obviously out of order”, as set forth in paragraph (c) of that article.

34. In the present case, the petitioners are alleging a series of irregularities during the suit that a third party brought against them seeking to have the inheritance rights nullified. They assert that they were denied their property rights over the piece of land called “El Chile or Cerro Grande” owing to the alleged lack of Independence and impartiality of the judges and the authorities in all stages of the judicial process. The Commission does not have the information that would enable it to infer that the judicial proceedings, and actions or omissions by the State tend to characterize violations of due process under the American Convention. From the information presented, the Commission observes that the alleged victims had access to the domestic courts, even though the latter did not find in their favor.

35. Concerning these allegations, the IACHR must invoke one of its most fundamental principles, which is that it cannot replace the domestic judicial authorities in interpreting the scope of a state’s applicable procedural and substantive laws.³ The IACHR has held that it cannot play the part of a court of fourth instance to examine alleged errors in the law or the facts that domestic courts may have committed in exercising their competence.⁴

36. The Commission does not have competence to impose its judgment over that of the domestic courts on matters involving the interpretation and explanation of domestic law or the assessment of the facts. Thus, the judicial protection that the Convention recognizes includes the right to just, impartial and swift proceedings that afford the possibility, but never the guarantee of a favorable

³ IACHR, Report No. 39/05 (Peru), Petition 792/01, *Carlos Iparraguirre and Luz Amada Vásquez de Iparraguirre*, March 9, 2005.

⁴ IACHR, Report No. 45/04, Petition 369-01, Inadmissibility, Luis Guillermo Bedoya de Vivanco, Peru, October 13, 2004, paragraph 41; Report No. 16/03, Petition 346-01, Inadmissibility, Edison Rodrigo Toledo Echeverría, Ecuador, February 20, 2003, paragraph 38; Report No. 122/01, Petition 15-00, Inadmissibility, Wilma Rosa Posadas, Argentina, October 10, 2001, paragraph 10, and Report No. 39/96, Case 11.673, Inadmissibility, Santiago Marzoni, Argentina, October 15, 1996, paragraph 71.

outcome.⁵ The interpretation of the law, the relevant procedure and the weighing of the evidence are, among others, functions to be performed by the domestic courts, which the IACHR cannot supplant.⁶

37. Regarding the petitioners' claims that they had been persecuted by police, brought before the courts charged with a variety of crimes, and the target of assaults by a private party, the Commission observes that the information supplied regarding these allegations is insufficient to enable it to examine possible facts that could tend to characterize violations of the American Convention.

38. Based on the foregoing considerations, the Commission concludes that the allegations and information supplied by the petitioners do not tend to establish a violation of rights protected under the American Convention, which means that the complaint does not satisfy the requirements stipulated in Article 47(b) of that instrument.

V. CONCLUSION

39. Based on the arguments of fact and of law stated above, the Commission considers that the petition is inadmissible under Article 47(b) of the American Convention and, therefore,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the present petition inadmissible pursuant to Article 47(b) of the Convention.
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 13th day of the month of November, 2012. (Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Felipe González, Second Vice-President; Dinah Shelton, Rodrigo Escobar Gil, Rosa María Ortiz and Rose-Marie Antoine, Commissioners.

⁵ IACHR, Report No. 39/96, Case 11.773, *S. Marzióni*, Argentina, October 15, 1996, Report No.48/98, Case 11.403, *Carlos Alberto Marín Ramírez* (Colombia), September 29, 1998, paragraph 42.

⁶ IACHR, Report No. 39/05 (Peru), Petition 792/01, *Carlos Iparraguirre and Luz Amada Vásquez de Iparraguirre*, March 9, 2005.