

REPORT No. 7/13
PETITION 992-05
ADMISSIBILITY
JOSÉ TULIO CARRILLO HERNÁNDEZ
GUATEMALA
March 19, 2013

I. SUMMARY

1. On September 2, 2005, the Inter-American Commission on Human Rights (hereinafter "Inter-American Commission," "Commission," or "IACHR") received a complaint filed by José Julio Tulio Carrillo Hernández, represented by Carlos Antonio Pop (hereinafter "petitioners" or "the alleged victims"), against the State of Guatemala (hereinafter "Guatemala," "State," or "Guatemalan State"), for the alleged violation of the right to a fair trial, property, and judicial protection enshrined in the American Convention on Human Rights (hereinafter, "American Convention" or "Convention").

2. The petitioner claims that the Guatemalan State violated his rights by setting up a National Civil Police substation on his property without his authorization or entering into any contractual agreement of any kind. He alleges that even though a final court judgment has been issued in his favor, he has been unsuccessful at attaining judgment execution, inasmuch as the State has not taken the required measures and, thus, has denied him effective judicial protection. He further contends that as a result of this situation, he is the target of persecution.

3. In response, the State argues that the petition should be found inadmissible, because the claim pursued by the petitioner regarding the property is illegitimate, because the deed and land records on which his right to property is based are invalid. It asserts that the property that the alleged victim claims to own is linked to an estate that has historically belonged to the Guatemalan State and that domestic remedies have not been exhausted.

4. Without prejudice to the merits of the petition, after examining the positions of the parties and in keeping with the requirements set forth in Articles 46 and 47 of the American Convention, the Commission decides to find the case admissible for the purpose of examining the alleged violation of the rights enshrined in Articles 8.1, 21 and 25, in connection with Article 1.1 of said treaty. The Commission also decides to notify the parties of this decision, publish it and include it in its Annual Report to the OAS General Assembly.

II. PROCEEDINGS BEFORE THE COMMISSION

5. On September 2, 2005, the Commission received the petition and assigned it number 992-05. On January 6, 2006, the relevant parts of the petition were forwarded to the State, setting a two-month deadline for its reply, as provided for in Article 30.2 of the IACHR Rules of Procedure. On March 8, 2006, the State requested an extension in order to submit its reply. The State's reply was received on April 10, 2006. Said communication was duly forwarded to the petitioner.

6. Additionally, the IACHR received information from the petitioner in communications dated December 7, 2005, February 6, 2006, March 3, 2006, September 18, 2006, March 28, 2007, October 25, 2007, March 10, 2008, June 17, 2008, July 30, 2009, November 12, 2009, December 26, 2011, January 12, 2012, February 14, 2012, March 7, 2012 and September 13, 2012. Said communications were duly forwarded to the State.

7. Likewise, the IACHR received information from the State on July 26, 2006, May 14, 2007, January 10, 2008, April 29, 2008, October 5, 2009, January 31, 2012, March 6, 2012, December 17, 2012 and January 9, 2013. Said communications were duly forwarded to the petitioner.

8. On December 26, 2011, the petitioner made known the willingness of the alleged victim to enter into a friendly settlement process. On December 27, 2011, the IACHR placed itself at the disposal of the parties with a view toward reaching a friendly settlement in the instant case. In response, on January 31, 2012, the State expressed its willingness to reach a friendly settlement and reiterated so in its note dated March 6, 2012.

9. During the visit of IACHR President Commissioner Dinah Shelton to Guatemala, on March 10, 2012, a working meeting was held regarding the instant petition, which both parties attended. At the meeting, the parties reiterated their interest in reaching a friendly settlement; however, they noted obstacles preventing it.

10. On August 28, 2012, the IACHR received a communication from the petitioner informing it that it was dropping out of the friendly settlement process it had entered into with the Guatemalan State and requested the IACHR to continue processing the petition. On August 29, 2012, the IACHR officially terminated the friendly settlement process.

III. POSITION OF THE PARTIES

A. The Petitioner

11. José Julio Tulio Carrillo Hernández claims that, since 1983, he has owned the property located at 15th Avenue and 2nd Street, Boulevard Vista Hermosa of Zone 15 of Guatemala City. He contends that he purchased the property from his spouse's father and the title was recorded in the General Register of Property of Guatemala City. He asserts that in 1998, the National Civil Police set up a substation in the vicinity of his property. He notes that six months later, at the request of residents of the sector, the substation was moved onto the premises of Mr. Carrillo Hernandez's property.

12. As to the history of the property, he claims that on January 30, 1950, Raul Figueroa Valle sold Oakland estate to the Institute for Production Development (Instituto de Fomento de Producción or INFOP, its Spanish-language acronym), but had kept two blocks of said property for himself. He argues that the two blocks that Mr. Figueroa Valle had kept for himself were sold to Mr. Rogelio Roca Estrada, the petitioner's father-in-law, on December 31, 1959, who in turn sold the property to the alleged victim in 1983.

13. The petitioner notes that in 2000 he filed a lawsuit in the First Trial Court for Civil Matters against the National Civil Police, the Ministry of the Interior and the Attorney General of the Nation in order to regain possession of the property. He asserts that an objection made by the Attorney General was sustained at the onset of the proceeding and, therefore, no ruling on the merits was issued.

14. He claims that he did not pursue any further court proceedings until 2002, when he noticed that the State requested the National Housing Bank (BANVI) (acting as owner of the mother estate from which Raul Figueroa had kept two blocks as the seller of the original property), to break off a portion of the lot and grant it to the National Civil Police, in order to "avoid subsequent claims." According to the petitioner, the property of which he claims to be the legitimate owner encompasses that lot.

15. The petitioner notes that in light of these actions, he brought a special action for constitutional relief, *amparo* suit 82-2004 (case file 2170-2004), with the Second Chamber of the Court of Appeals, for Criminal Matters, Drug Activity and Environmental Crimes, against the Chief of the National Civil Police, for allegedly attempting to unlawfully take possession of the petitioner's property. He claims that on June 23, 2004, this Court issued a judgment granting constitutional protection to Carrillo Hernandez and ordering the authority being challenged to vacate the lot on the petitioner's property, within a period of 30 days from the date of the upholding of the ruling.

16. He claims that the *amparo* judgment of June 23, 2004 was appealed by the Chief of the National Civil Police before the Constitutional Court of the Republic of Guatemala. He notes that this Court upheld the *amparo* decision of March 30, 2005.

17. He alleges that the National Civil Police Chief wrote a letter to the Chief Justice of the Constitutional Court on March 27, 2005, claiming that the Police Substation was located in an area that had been assigned to it by Government Decision and was not located on the property owned by Mr. Carrillo and, therefore, there was a legal and physical preclusion from proceeding to vacate the lot. In response to the letter, the Constitutional Court decided on May 27, 2005, to send a letter to the court of original jurisdiction instructing it to take into account the failure to comply with the *amparo* 82-2004 judgment execution order and to take the appropriate action to enforce the judgment of *amparo* case 82-2004. He argues that this ruling proves that the judgment was final and dispositive and, therefore, domestic remedies had been exhausted.

18. He asserts that the Ministry of the Interior and the Office of the Attorney General of the Nation filed three *amparo* suits (950-2005, 526-2005, 929-2005) against the judgment of the March 30, 2005 *amparo* case, which were dismissed on the grounds that *amparo* suits may not be brought against *amparo* judgments.

19. He states that on June 21, 2005, the Constitutional Court, made up of an Alternate Justice, decided to vacate *sua sponte*¹ the proceedings in case file 2170-2004. He claims that in this Court decision, the petitioner had been summoned to “establish with clarity, the delimitation of the area that was protected under the *amparo* (relief for constitutional protection).” He notes that on July 15, 2005, the Court requested the petitioner, within a period of 10 days, to establish the delimitation of the physical area protected by means of the *amparo*. According to the petitioner, he had provided this information to the Court on July 24, of that same year, thus fulfilling the request. He notes that on October 11, 2005, he was served notice of a new Court decision, under which the proceedings were amended *sua sponte* and, consequently, after the proceedings of the appeal were amended, the *amparo* judgment of March 30, 2005, however, would remain firm.

20. The petitioner notes that he filed a criminal complaint against the Chief of the National Civil Police for the alleged crime of abuse of authority, disobedience and aggravated usurpation, to no avail. He also reports that the Office of the Public Prosecutor brought criminal charges against him in case 13.503-2005 for material misrepresentation, ideological misrepresentation and use of forged documents, before the Fourth Trial Court for Criminal Matters, Drug Activity and Crimes against the Environment. The petitioner notes that on December 29, 2005, a motion to dismiss the criminal prosecution because the statute of limitations had lapsed, which was filed by him, was granted.

B. The State

21. In its reply, the State argued that the petition should be found inadmissible because the alleged victim did not prove that his human rights had been violated and he had not exhausted domestic remedies. It contended that the excessive delay would be the result of the “criminal plan” that was hatched by the petitioner with regard to the alleged facts.

22. Additionally, it claimed that the property in question was linked historically to an estate that had belonged to the State. It argued that when Raul Figueroa Valle, the former owner of the original mother estate, sold it to the National Housing Bank, he had reserved the right to break off two blocks of said property for himself. Those two blocks were broken off on April 11, 1960. It argues that Figueroa Valle entered into a full exchange transaction of the two-block lot, with Mrs. Concepción Concha Azurdia Arimany de Bianchi on January 26, 1972, which was recorded in a Public Deed and the National Register of Property. Meanwhile, according to the argument of the State, the petitioner’s rights are to another property and that the petitioner is using forged documents to provide evidence of his ownership of the property that is owned by the Guatemalan State. It argued that Carrillo Hernandez and his father-in-law had attempted to put on a “staging to lead to believe that the

¹ The petitioner makes reference to Article 68 of the *amparo* law, habeas corpus and constitutionality, which establishes:

“The Constitutional Court may annul proceedings when examination of the case establishes that provisions of the law were not observed, in which case the proceedings must be revised from the time when the annulment was committed.”

supposed rights to the estate that the defendant and his father-in-law recorded, are the same as the ones currently belonging to the State.”

23. The State contended that the public deed through which Figueroa Valle presumably sold the property to Roca Estrada, who in turn, in 1983 sold to the petitioner was flawed thus rendering it null and void, based on a technical examination that had been conducted by the Forensic Crime Investigation Office of the General Directorate of the National Civil Police. It claimed that in this examination, the signatures of Raul Figueroa Valle and those of the Notary Public presented serious graphological differences and that in comparing them to other documents, the conclusion can be drawn that they “are not consistent and consequently are forged.”

24. The State alleged that the domestic judicial proceedings whereby the petitioner sought to assert his supposed right of ownership were invalid, inasmuch as they were based on forged documents and, therefore, the petitioner has committed the criminal offenses of material and ideological misrepresentation and use of forged documents. It noted that criminal proceeding 13,503-2005 was opened on these grounds before the Fourth Criminal Trial Court for Drug Activity and Crimes against the Environment.

25. The State noted that civil lawsuit 215-2006 was brought by the Guatemalan State against the petitioner, before the Eighth Civil Trial Court for the absolute annulment of the deeds and public records introduced by the petitioner. It also claimed that execution of the judgment of *Amparo* suit 82-2004 had been stayed under a ruling dated January 13, 2006, within the aforementioned civil suit. The State concluded that there are two ongoing domestic court proceedings (Criminal Case 13,503-2005 and Civil Case 215-2006) to elucidate the legitimacy of ownership in this case and, therefore, domestic remedies had not been exhausted.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

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

26. The petitioner is entitled, in principle, under Article 44 of the Convention to lodge petitions before the Commission. The petition identifies as the alleged victim José Tulio Carrillo Hernández, for whom the Guatemalan State pledged to respect and ensure the rights recognized in the American Declaration. As for the State, the Commission notes that Guatemala has been a State Party to the Convention since May 25, 1978, when it deposited its instrument of ratification, respectively. Therefore, the Commission is competent *ratione personae* to examine the petition. The IACHR is also competent *ratione loci* to entertain the petition, inasmuch as violations of rights protected in the American Convention are alleged therein to have taken place within the territory of Guatemala, a State Party to said treaty.

27. The IACHR is competent *ratione temporis*, being that the facts alleged in the petition presumably occurred when the obligation to respect and ensure the rights protected in the Convention was already in effect for the State. Lastly, the IACHR is competent *ratione materiae*, because the petition charges potential violations of human rights protected by the American Convention.

B. Exhaustion of domestic remedies

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

29. The alleged victim claims that he exhausted domestic remedies with the March 30, 2005 judgment of the Constitutional Court of Guatemala; while the State contends that a proceeding to annul a deed is pending and, therefore, domestic remedies have not been exhausted.

30. In the instant case, the IACHR notes that the alleged victim filed *amparo* appeal 82-2004 with the Second Chamber of the Court of Appeals for Criminal Matters, Drug Activity and Environmental Crimes. On June 23, 2004, this Chamber issued a judgment in favor of Carrillo Hernandez. The judgment was appealed and upheld by the Constitutional Court of Guatemala on March 30, 2005. Additionally, on October 11, 2005, the Constitutional Court amended the proceeding *sua sponte* and, consequently, vacated the appeal proceedings; however, the *amparo* judgment was still upheld. With regard to the subject matter of the petition, the Commission concludes that the requirement of prior exhaustion of domestic remedies has been met. Concerning the pending proceeding to annul the deed raised by the State, if relevant, the Commission would examine it based on any arguments that may be put forth by the State during the merits stage.

2. Timeliness of the petition

31. Article 46.b of the American Convention sets forth that in order for a petition to be admissible by the Commission, it must be filed within a period of six months from the date on which the victim was notified of the final judgment exhausting domestic remedies.

32. In the instant case, the Commission has established that domestic remedies were exhausted with the decision of March 30, 2005 of the Constitutional Court of Guatemala, and that the petition was filed with the Commission on September 2, 2005. Consequently, the Commission concludes that this requirement has been met.

3. Duplication and international *res judicata*

33. Nothing in the case file indicates that the subject of the petition is pending decision in another international settlement proceeding, or that it duplicates a petition already examined by this or any other international body. Therefore, the requirements of Articles 46(1)(c) and 47(d) can be deemed to have been met.

4. Colorable claim

34. The Commission does not consider it appropriate at this stage of the procedure to determine whether or not the alleged violations occurred to the detriment of the alleged victims. For the purposes of admissibility, the IACHR need only, at this point in time, decide whether the allegations state facts which, should they be proven, would tend to establish violations of the American Convention, as provided in Article 47(b) thereof, and whether the petition is “manifestly groundless” or “obviously out of order,” in accordance with paragraph (c) of the same Article. The standard for evaluating these requirements is different from the one used to judge the merits of a complaint. The IACHR must undertake a *prima facie* evaluation to determine whether the complaint demonstrates an apparent or potential violation of a right protected by the American Convention, but not whether such a violation occurred.² In the current stage, a summary review that does not prejudice or advance an opinion on the substance must be conducted. By establishing both an admissibility stage and a merits

² See IACHR, Report No. 128/01, Case 12.367, *Mauricio Herrera Ulloa and Fernán Vargas Rohrmoser of the Daily Newspaper “La Nación”* (Costa Rica), December 3, 2001, par. 50; Report No. 4/04, Petition 12.324, *Rubén Luis Godoy* (Argentina), February 24, 2004, par. 43; Report No. 32/07, Petition 429-05, *Juan Patricio Marileo Saravia et al* (Chile), April 23, 2007, par. 54..

stage, the Commission's own Rules of Procedure reflect this distinction between the evaluation required for the Commission to declare a petition admissible and the one required to establish the existence of a violation attributable to the State.³

35. Neither the American Convention nor the Rules of Procedure of the Inter-American Commission on Human Rights requires petitioners to identify the specific rights allegedly violated by the State in matters submitted to the Commission, even though the petitioners may do so. However, it is the duty of the Commission, in following the system of legal precedents, to determine in its admissibility reports, what provision of relevant Inter-American instruments is applicable and could be concluded to have been violated, should the alleged facts be proven by means of sufficient evidence and legal argument. In this case, the petitioner claims that the State violated the alleged victim's human rights because it denied effective judicial protection when it did not take the necessary measures to enforce the *amparo* judgment. The State, however, claims that facts have not been identified which would tend to establish a violation of the American Convention.

36. Based on the information and documents submitted by the parties, the IACHR finds that the alleged facts regarding the alleged failure of the State to take the required measures to enforce the judgment, because the competent authorities allegedly did not allow it based on their alleged interest in the petitioner's property, could tend to establish a violation of the rights enshrined in Articles 8.1, 21 and 25 of the American Convention, in connection with Article 1.1 of said instrument, with respect to the alleged victim and his next-of-kin.

V. CONCLUSIONS

37. Based on the foregoing arguments of fact and law, and without prejudging the merits of the case, the Inter-American Commission concludes that the petition meets the admissibility requirements laid out in Articles 46 and 47 of the American Convention, and thus

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To find the petition admissible as to the alleged violations of the human rights set forth in Articles 8.1, 21 and 25 of the Convention, in connection with Article 1.1 of said treaty, with respect to the alleged victim.

2. To notify this decision to the State and the petitioners.

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

Done and signed in the city of Washington, D.C., on the 19th day of March 2013. (Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Felipe González, Dinah Shelton, and Rodrigo Escobar Gil, Commissioners.

³ See IACHR, Report No. 31/03, Case 12.195, *Mario Alberto Jara Oñate et al* (Chile), March 7, 2003, par. 41; Report No. 4/04, Petition 12.324, *Rubén Luis Godoy* (Argentina), February 24, 2004, par. 43; Petition 429-05, *Juan Patricio Marileo Saravia et al* (Chile), April 23, 2007, par. 54; Petition 581-05, *Victor Manuel Ancalaf LLaupe* (Chile), May 2, 2007, par 46.