

REPORT No. 6/13
PETITION 372-04
ADMISSIBILITY
IRMA ORELLANA LOPEZ VDA. DE ROMERO ET AL
GUATEMALA
March 19, 2013

I. SUMMARY

1. On April 20, 2004, the Inter-American Commission on Human Rights (hereinafter "Commission," "Inter-American Commission" or "IACHR") received a petition lodged by Guillermo Enrique Romero Orellana (hereinafter "the petitioner"), on behalf of Irma Leticia Orellana López Viuda de Romero, Brenda Carolina Romero Orellana, Claudia María Romero Orellana and on his own behalf (hereinafter "alleged victims"). The petition was filed against the State of Guatemala (hereinafter "State," "Guatemalan State" or "Guatemala"), for allegedly failing in its duty to investigate with due diligence the murder, on April 27, 1998, of attorney Guillermo Romero Peralta, the husband and father of the alleged victims.

2. The petitioner claims that there is no evidence that the State has conducted an investigation into the murder of his father and he alleges denial of justice.

3. In response, the State contends that domestic remedies have not been exhausted and that the case is still in the investigation stage. Consequently, it requests that the petition be found inadmissible.

4. Without prejudice to the merits of the matter, after examining the positions of the parties and in keeping with the requirements set forth under Articles 46 and 47 of the American Convention on Human Rights (hereinafter "Convention" or "American Convention"), the Commission decides to find the case admissible for the purpose of examining the alleged violation of the rights enshrined in Articles 5.1, 8.1 and 25, in connection with Article 1.1 of said treaty with respect to the next-of-kin of Guillermo Romero Peralta: widowed spouse Irma Leticia Orellana López de Romero, Brenda Carolina Romero Orellana, Claudia María Romero Orellana and Guillermo Enrique Romero Orellana. 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 April 20, 2004, the Commission received the petition and assigned it number 372-04. On May 1, 2006, the IACHR forwarded the relevant parts of the petition to the State of Guatemala, setting a two-month deadline for reply, as provided under Article 30.2 of the IACHR Rules of Procedure in effect at the time. The State's reply was received on July 10, 2006. Said communication was duly forwarded to the petitioner.

6. Additionally, the IACHR received information from the petitioner on July 6, 2004 and October 12, 2006. Said communications were duly forwarded to the State.

7. Likewise, the IACHR received information from the State on December 27, 2006, May 10, 2010 and June 4, 2010. Said communications were duly forwarded to the petitioner.

III. POSITION OF THE PARTIES

A. Petitioner

8. The petitioner argues that the State of Guatemala has failed in its duty to investigate with due diligence the murder of his father, attorney Guillermo Romero Peralta. He claims that on April 27, 1998, several gunmen entered the law offices of attorney-at-law Romero Peralta, which were located in the Downtown Neighborhood of the Municipality of Gualán (Barrio El Centro del Municipio de Gualán) of the Department of Zacapa. He alleges that his father's life was taken with two gunshots without a word being uttered.

9. He argues that a few days prior to the murder, Mr. Romero Peralta worked in the defense of Mr. Rolando Arturo Aquino Guerra, the Mayor of the city of Chiquimula. He adds that Mr. Romero had conveyed to his son that he feared retaliation from a Mr. Baudillo Hichos, a Deputy to the Congress of the Republic at the time and former Chief of the now defunct Treasury Guard, because he is reputed to have directly interfered to prevent Mayor Aquino Guerra from retaking office as the City's Chief Executive. He notes that the only person to witness the entry of the individuals who murdered his father was the secretary and that she fled out of fear of retaliation.

10. With regard to the case investigation, he claims that he has attempted to inquire about the case file in the District Attorney's Office of the Office of the Public Prosecutor of the Department of Zacapa confirming that no investigation had been conducted by the competent agencies and that it was the State's contention that a five or ten-page document constituted an investigation case file. He also rejects the assertions of the State that statements were taken in an effort to investigate the crimes. He further notes that he provided information to the State on individuals who should be interviewed, but these people were never contacted.

11. Despite efforts made on several occasions to gain access to the judicial case file, the authorities told him that it was closed and filed away and that they needed time to locate it. He also states that before lodging the petition with the IACHR, he requested information about the case, and was informed by the authorities that there was no case investigation.

12. Regarding prior exhaustion of domestic remedies, he asserts that in accordance with Guatemalan criminal law, it is the duty of the State to conduct the investigation of a criminal act, and in this particular case, it was the responsibility of the District Attorney's Office of the Office of the Public Prosecutor of the Department of Zacapa.

B. State

13. The State requests that the petition be found inadmissible because the petitioner has not met the prior exhaustion of domestic remedies requirement to entitle him to appeal to the Inter-American system.

14. It claims that the District Attorney's Office of the Department of Zacapa investigated the complaint linked to the violent death of attorney Guillermo Enrique Romero Peralta under case file MP-922-98. It asserts that the investigations to determine those allegedly responsible included the taking of testimony and interviews of witnesses by the National Civil Police, among other agencies.

15. On February 16, 1999, the lead prosecutor of the respective investigation closed the case under Article 327 of the Criminal Code of Procedure. Said provision determines that when no defendant has been individually identified or when he has been declared at large, the Office of the Public Prosecutor shall enter into the record that the proceedings are closed.

16. On July 10, 2006, the State expressed to the IACHR its willingness to vacate the decision to close the case and reopen the investigation and use all legal means available to track down those responsible in this case.

17. In a communication dated December 27, 2006, the State asserts that the case investigation has been directed by the Office of the Prosecutor for Human Rights since August 25, 2006, in order to give it the high priority that it requires and that an investigation plan was drawn up. The Office of the Public Prosecutor requested reports from different entities, as well as investigation records from the Office of Criminal Investigations of the Office of the Public Prosecutor, interviews of family members, and asserted it had located the individual present at the time of the crime in the office of Mr. Romero, who claimed she did not remember anything about the events or any description of those responsible.

18. The State expresses to the IACHR its willingness to conduct a thorough judicial investigation into the instant case. However, it notes that it has been impossible thus far to identify those allegedly responsible for the death of Mr. Guillermo Romero Peralta. In view of the fact that the family members of the victim have background information on the case, the state suggests that the petitioner join the process of investigation that is being conducted under domestic legal procedures in accordance with Articles 116 and 118 of the Code of Criminal Procedure, in order to facilitate the investigative efforts of the Office of the Public Prosecutor. It also reports that it is waiting to receive the criminal case file in order to forward it to the IACHR and notes that the case is still in the preliminary investigation phase.

19. As for domestic remedies, the State claims that they have not been exhausted and, therefore, the petition should be found inadmissible.

IV. ANALYSIS OF ADMISSIBILITY

A. Competence of the Inter-American Commission *ratione personæ, ratione loci, ratione temporis* and *ratione materiæ*

20. The petitioner is entitled, in principle, under Article 44 of the Convention to lodge petitions before the Commission. The petition identifies as the alleged victims individual persons, 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. 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 convention.

21. 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. Other Admissibility Requirements

1. Exhaustion of Domestic Remedies

22. 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. The purpose of this requirement is to allow national authorities to be apprised of the alleged violation of a protected right and to have the opportunity to resolve it if appropriate before it is considered at the international level. Article 46(2) of the Convention establishes three situations in which the rule requiring the exhaustion of domestic remedies does not apply: (a) when 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) when the party alleging violation of his rights has been denied access to the remedies of domestic law or has been prevented from exhausting them; or (c) when there has been unwarranted delay in rendering a final judgment under the

forementioned remedies. This provision requires not only that the remedies in question exist formally but also that they be adequate and effective.

23. In the instant case, the State claims that the investigation into the crimes is pending and that domestic remedies have not been exhausted. However, the petitioner argues that the murder of Guillermo Romero Peralta was in 1998, the authorities informally have told him that the case has been closed and, subsequently, that it was still in the stage of investigation.

24. Without proceeding to analyze the arguments put forth by the parties as to the alleged violation of the right to a fair trial and judicial protection, the Commission notes that fourteen years have elapsed since Guillermo Enrique Romero Peralta was found dead, and as of the date of the drafting of the instant report, the representatives of the State have not provided any concrete information on measures taken to move forward in the recent investigation being conducted by the State or on progress that would lead to clarifying the facts and punishing those responsible.

25. The Inter-American Commission establishes –for purposes of admissibility– that there has been an unwarranted delay by the Guatemalan judicial bodies with respect to the investigation into the death of Guillermo Romero Peralta, which is still ongoing. Consequently, the IACHR finds that the exception to the rule of prior exhaustion of domestic remedies set forth in Article 46.2.c of the American Convention is applicable.

26. Lastly, it must be noted that invoking the exceptions to the rule of exhaustion of domestic remedies set forth in Article 46(2) of the Convention is closely linked to the issue of determining whether certain rights enshrined in the Convention, such as the right of access to justice, may have been violated. However, by their nature and purpose, the provisions of Article 46(2) are independent from the substantive norms of the Convention. It is therefore necessary to determine separately whether exceptions to the rule of exhaustion of domestic remedies set forth in this Article apply to a particular case before analyzing the merits of the case, because this determination is subject to a different standard of appreciation than the standard used to establish violations of Articles 8 and 25 of the Convention. It is fitting to clarify that the causes and effects that have impeded exhaustion of domestic remedies in the instant case will be analyzed, as relevant, in the Commission's report on the merits of the matter, in order to establish whether or not there have indeed been violations of the Convention.

2. Filing Period

27. With regard to the requirement set forth in Article 46(1)(b) of the American Convention, under which petitions 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, the Commission finds that meeting this deadline is not applicable either, inasmuch as the petition was filed within a reasonable period of time as set forth in Article 32.2 of the Rules of Procedure for those instances in which no final judgment has been issued prior to filing the petition.

3. Duplication of International Proceedings and *res judicata*

28. 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. Characterization of Alleged Facts

29. 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.

30. 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.¹ 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 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.²

31. Furthermore, 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.

32. Accordingly, the IACHR finds that the alleged facts tend to establish a possible violation of the rights enshrined in Articles 5.1, 8.1 and 25, in connection with Article 1.1 of said treaty with respect to the next-of-kin of Guillermo Romero Peralta: widowed spouse Irma Leticia Orellana López Viuda de Romero, Brenda Carolina Romero Orellana, Claudia María Romero Orellana and Guillermo Enrique Romero Orellana.

V. CONCLUSIONS

33. The Inter-American Commission concludes that it is competent to hear the merits of this matter and that the petition is admissible in accordance with Articles 46 and 47 of the American Convention and decides to proceed to analysis of the merits as it pertains to the alleged violation of the rights enshrined in Articles 5.1, 8.1 and 25, in connection with Article 1.1 of said treaty, with respect to widowed spouse Irma Leticia Orellana Lopez de Romero, Brenda Carolina Romero Orellana, Claudia María Romero Orellana and Guillermo Enrique Romero Orellana.

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

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To find the instant petition admissible as to the alleged violations of the rights recognized in Articles 5.1, 8.1 and 25, in connection with Article 1.1 of said treaty with respect to widowed spouse Irma Leticia Orellana Lopez de Romero, Brenda Carolina Romero Orellana, Claudia Maria Romero Orellana and Guillermo Enrique Romero Orellana.

2. To notify the parties of this decision.

¹ 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.

² 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, *Víctor Manuel Ancalaf LLaupe* (Chile), May 2, 2007, par 46.

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 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.