



REPORT No. 120/09
PETITION 270-01
ADMISSIBILITY
CARLOS RAÚL MORALES CATALÁN *ET AL.*
GUATEMALA
November 12, 2009

I. SUMMARY

1. On April 27, 2001, the Inter-American Commission for Human Rights (hereinafter "the Inter-American Commission, "the Commission," or "the IACHR") received a petition lodged by Carlos Raúl Morales Catalán (hereinafter "the petitioner") on his own behalf and that of his sons José Raúl and Javier Ernesto Morales Vera (hereinafter "the alleged victims") against the Republic of Guatemala (hereinafter "the Guatemalan State," "Guatemala," or "the State") for the Guatemalan State's alleged responsibility in denying the petitioner and the alleged victims justice in the context of a criminal case and of civil compensation awarded for the injuries sustained by his sons in an automobile accident on July 16, 1998.

2. The petitioner claims that the State of Guatemala is responsible under Article 1(1) and (2) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") for violation of the rights enshrined in its Articles 5 (humane treatment), 8 (right to a fair trial), 19 (rights of the child), and 25 (judicial protection). He also alleges violation of Articles 1, 3, 6, and 19 of the United Nations Convention on the Rights of the Child. As regards the requirements for admissibility, he states that he has exhausted the remedies available under domestic law.

3. The State requests the IACHR to declare the instant petition inadmissible because the two people accused of responsibility for the facts have been tried and found guilty at both the criminal and the civil levels.

4. Without prejudging the merits of the case, the IACHR, after analyzing the available information and verifying compliance with the requirements for admissibility laid down in Articles 46 and 47 of the American Convention and in Articles 30 and 37 of its Rules of Procedure, concludes that the petition is admissible under Article 1(1) and (2) of the American Convention with respect to the alleged violation of the rights established in Articles 8 and 25 thereof. However, its claims of violation of Articles 5 and 19 of said international instrument are inadmissible. The Commission decides to notify the parties of this decision, to publish it, and to include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCESSING BY THE COMMISSION

5. The Commission received the petition on April 27, 2001 and assigned it case number 270-01. On December 22, 2006, it transmitted a copy of the relevant portions to the State, requesting it to submit its response within a period of two months. The State's response was received on March 9, 2007.

6. In addition, the IACHR received information from the petitioner on the following dates: December 4, 2001, April 3, 2003, August 29, 2003, May 22, 2006, August 18, 2006, May 3, 2007, May 8, 2007, June 12, 2007, August 31, 2007, February 13, 2008, June 30, 2008, July 18, 2008, August 11, 2008, October 9, 2008, October 22, 2008, November 26, 2008, and December 19, 2008. These communications were duly forwarded to the State.

7. The IACHR also received comments from the State on March 9, 2007, September 26, 2008, October 15, 2008, May 8, 2009, and October 15, 2009. These communications were duly forwarded to the petitioner.

III. POSITIONS OF THE PARTIES

A. Petitioner

8. The petitioner reports that on July 16, 1998 his two children, Javier Ernesto and José Raúl Morales Vera, aged 2 and 4 years respectively, were traveling to school in a minibus driven by Laura Patricia Torón Torres de Luna when it was struck by another vehicle driven by Santiago Quidiello Valenzuela. One child died and seven others, including his two sons, were injured.

9. The petitioner states that, as a result of the accident, his son Javier Ernesto lost movement in his right forefinger and has 20 percent impairment of hand function. He is currently awaiting reconstructive surgery to restore normal hand function. He reports that his son José Raul sustained injuries to the abdominal viscera, blows to the head, and a hip injury that caused a bone structure change for which he underwent several surgeries. These proved unsuccessful, because he now has a shortening of the left femur which makes it difficult for him to walk. He also has developed a deviation of the spinal column that should be operated. He states that, as a result of the accident, he has had to pay for expensive medical, surgical, and legal services and that, because of his tenuous financial situation, he has not been able to have his sons undergo necessary operations.

10. Regarding actions brought under domestic law, he states that he has been a criminal plaintiff and a civil plaintiff in a case against Laura Patricia Torón Torres de Luna and Santiago Quidiello Valenzuela prosecuted by the Public Ministry in the Third Court of Criminal First Instance, Drug-trafficking, and Environmental Offenses. He states that said court issued an indictment and released the defendants on bail of 8,000 quetzals. He argues that the bail was too low because the judge did not consider the potential civil liability arising from the injuries sustained by the alleged victims.

11. He states that, at the first hearing in the trial, he was unable to participate as a criminal and civil plaintiff because, under Article 84 of the Code of Criminal Procedure, the accused must consent to the presence of the criminal plaintiff. He was therefore unable to assert the need to set a bond amount that reflected the seriousness of the alleged offense. Furthermore, the Public Ministry did not sufficiently investigate the potential extent of civil liability under national legislation and failed to defend the interests of the affected children.

12. He states that after the accused were freed on bail, they brought a series of appeals, including an *amparo* appeal. As a result, even though charges were filed on March 15, 1999, it was not until October 2003 that oral proceedings began in the Eighth Court of Criminal First Instance, Drug-trafficking, and Environmental Offenses. The petitioner states that, under Article 344 of the Code of Criminal Procedure, once the judge has set the date for the initial hearing in the case, he has ten days to summon the persons authorized to participate to appear in court. In consequence, he alleges that in this case there was a delay of four years before the oral proceedings.

13. He reports that on March 5, 2004, the Court issued a judgment of guilt. He indicates that Laura Patricia Torón Torres de Luna was convicted of culpable homicide and received a sentence of four years in prison commutable to a fine of one hundred quetzals per day, and Santiago Quidiello Valenzuela was convicted of culpable homicide and culpable injury with a sentence of three years and six months in prison commutable to a fine of one hundred quetzals per day. They were each sentenced to pay civil liability of 250,000 quetzals for injuries to the alleged victims. The parties lodged appeals of the guilty judgment with the First Division of the Court of Appeals for Criminal Matters, which were denied on July 7, 2004, and the judgment became final on August 31, 2004.

14. He claims that in imposing the sentence, the court did not consider the generic aggravating circumstance established in the Criminal Code in relation to the accident victims being minors and riding in a school collective transport vehicle. He further states that under Article 127 of the Criminal Code, in instances of recklessness and lack of skill, as was the case with both of the drivers involved in the accident,^[1] the applicable criminal norm is a doubled sentence of six to sixteen years, not the norm of three to eight years applied by the court in this case. He maintains that commutation of the sentences was unwarranted, because under Article 50 of the Criminal Code commutation is available only where the offense in question is punishable by five years or less.^[2] According to the petitioner, commutation should not have been granted in such a serious case involving the death of one child and the injury of others, including his sons.

15. He states that rather than go to prison, the convicted parties paid the fine, which was approximately equal to half of the amount owed for civil compensation. Thus, according to the petitioner, the State put its own interests before payment to the victims.

16. He adds that on August 24, 2005 he instituted an executory proceeding for collection in the Third Court of Criminal First Instance to enforce civil compensation, because national law requires a party to institute a separate civil action to enforce compensation.^[3] The court ordered the convicted parties to pay, but they refused, and it was impossible to seize their property because they had fraudulently concealed it.

17. The petitioner states that, consequently, on September 18, 2006, he filed a criminal complaint with the Public Ministry against Ms. Torón Torres for fraudulent transfer of property and rights, charging her with document tampering and written misrepresentation (*falsedad material e ideológica*) and concealment of property. The case was referred to the Office of the Attorney General for Property-related Offenses. According to the petitioner, said

complaint presents convincing evidence that Ms. Torón Torres tampered with a public deed of sale by altering her husband's signature in order to conceal their real property and evade the payment of civil liability.

18. The petitioner states that the impossibility of obtaining compensation for his sons represents a denial of justice by the legal system of the State and makes it impossible for him to obtain the wherewithal to pay for the surgeries required to rehabilitate and cure his sons.

19. With regard to the alleged violation of Article 8 of the Convention, he argues that he did not receive justice within a reasonable period of time, given that the domestic proceedings were instituted in July 1998 and the civil liability compensation still has not been paid. With respect to Article 5 of the Convention, he argues that the State is in breach of its obligation to ensure payment, because national criminal law does not provide sufficient protection of the right to personal integrity in cases of culpable injury.

20. He asserts that Article 25 of the Convention was violated by the absence of mechanisms to ensure the enforcement of the criminal sentence handed down by the Eighth Court of Criminal First Instance, Drug-trafficking, and Environmental Offenses that convicted Mr. Quidiello and Ms. Torón Torres, sentenced them to prison, and imposed the payment of civil liability compensation. With regard to Article 19 of the Convention and Articles 1, 3, 6, and 19 of the Convention on the Rights of the Child, he maintains that the State has not taken adequate steps to compensate the victims for injuries that have seriously affected their personal development.

21. In conclusion, the petitioner claims that the State has not made effective provisions in its national legislation to ensure and enforce the rights of alleged victims; that its trial of the persons responsible for the facts was inadequate; that it did not impose adequate penalties in view of the serious nature of the offenses; and that it did not compensate the victims of the offense adequately. In addition, in his first communications, the petitioner states that he received threats after instituting proceedings against the accused.

22. Regarding the admissibility of the instant petition, he indicates that the criminal judgment of guilt is final. However, the civil case is not closed, since the civil proceeding for collection and the criminal complaint for document tampering/written misrepresentation and concealment of property are still pending. He contends that this situation qualifies as an exception to the Convention's rule of prior exhaustion of remedies under domestic law. He also maintains that the State is responsible for denial of justice because it violated the human rights of the victims by not expediting either the criminal trial or enforcement of the judgment in the civil proceeding for compensation.

B. The State

23. The State submits detailed information that is consistent with that provided by the petitioner as regards the criminal proceeding instituted against Santiago Quidiello Valenzuela and Laura Patricia Torón Torres de Luna for culpable homicide and culpable injury in which the petitioner participated as a criminal plaintiff and civil plaintiff. It submits detailed information in this connection and adds that the penalties imposed on the convicted parties also included special disqualification to drive a motor vehicle for one year and suspension of their driver's licenses.

24. It further indicates that, pursuant to the judgment of March 5, 2004, it admitted the civil suit brought by the petitioner as a civil plaintiff, imposing a payment of 250,000 quetzals on each of the convicted parties. It also indicates that the defendants were condemned to pay costs and to relinquish the two vehicles mentioned in the proceeding.

25. It points out that the petitioner and the two defendants lodged appeals with the First Division of the Court of Appeals for Criminal Matters, Drug-trafficking, and Environmental Offenses, which were denied, becoming final on August 31, 2004.

26. With regard to the length of the criminal trial, the State of Guatemala indicates that, although it began in 1998 and continued until August 31, 2004, this was due to the exercise of the parties' right of action and defense and not to a policy of disinterest or obstruction on the part of government authorities. It also states that it has no record of the *amparo* appeal that the petitioner claims was lodged by Santiago Quidiello.

27. With regard to the measures taken in Executive Proceeding for Collection No. 7565 of the Third Court of Civil First Instance, the State indicates that on August 16 and 22, 2007 notification was given of the decision of July 21, 2006 decreeing preventive attachment of the plaintiffs' deposit accounts and seizure of their vehicles and asking the cadastre office to report on whether they owned real property. It indicates that, according to the report, which it filed with the court, the accused did not own any real property. On October 10, 2007, the wages of one of the convicted parties were attached.

28. The State also provides detailed information about the complaint lodged by the petitioner against Ms. Torón Torres for document tampering/written misrepresentation and concealment of property. This information indicates that the Office of the Special Attorney for Property Registration Fraud is handling the complaint; that it took the statement of Ms. Morales Catalán on October 17, 2006; and that it organized a "conciliation meeting" on December 20, 2006. Despite Ms. Torón Torres' stated willingness to make monthly payments, the parties failed to reach a settlement, and the case resumed its course. A series of investigations have been carried out, which is why the case is now still at the investigative stage. It also indicates that on March 20, 2009 in the town of Zacapa, the office conducted an on-site inspection of the identity document entry of the alleged co-owner of the property under dispute with the accused; that it requested the migratory movements of said person, and that on the aforementioned date it applied to the property registry for a copy of the documents registering the disputed real property in order to establish the signature that was used. The State asserts that this complaint has been appropriately investigated and indicates that efforts are continuing to locate the original property documents in order to obtain a second expert opinion, notwithstanding a first expert opinion, based on copies of the documents, to the effect that the signature had not been forged or tampered.

29. The State adds that, after analyzing the various avenues for conviction in the complaint against Ms. Torón Torres for concealment of property, it accused two people, one of whom is a notary. When the persons accused failed to appear at a hearing scheduled for September 2009 to take their initial statements, the Public Ministry instructed the judge to declare contempt of court and to order the immediate arrest of the accused, which the judge did.

30. The State also indicates that, while the aforementioned criminal complaint is an outgrowth of the proceeding involving the traffic accident in which the petitioner's sons were injured, it constitutes a new case and is being investigated by the Public Ministry.

31. In conclusion, the State requests that the petition be declared inadmissible because the two people accused of responsibility for the incident have been found guilty at both the criminal and the civil levels. It also claims that responsibility for the effectiveness of the executive proceeding rests with individuals and should not be assigned to the State. It adds that the corresponding judge has ordered the seizure of the convicted parties' property in order to obtain payment of the amount claimed, and in the absence of property, the wages of one of the convicted parties has even been attached.

IV. ANALYSIS

A. Commission's jurisdiction *ratione personae*, *ratione loci*, *ratione temporis* and *ratione materiae*

32. The petitioner is eligible to submit a petition to the Commission under Article 44 of the Convention. The alleged victims indicated in the petition are individuals whose rights under the American Convention the State undertook to respect and ensure. The Commission notes that Guatemala has been a State party to the Convention since May 25, 1978, when it deposited its instrument of ratification. Consequently, the Commission has jurisdiction *ratione personae* to examine the instant petition.

33. The IACHR has jurisdiction *ratione loci* to consider the petition because it alleges that violations of rights protected by the American Convention took place in the territory of a State party to said Convention. The IACHR has jurisdiction *ratione temporis* inasmuch as, at the time of the facts alleged in the petition, the obligation to respect and ensure the rights recognized in the American Convention was in force in the State.

34. The Commission has jurisdiction *ratione materiae* because the petition alleges violations of human rights protected by the American Convention on Human Rights. With regard to the alleged violations of the rights enshrined in Articles 1, 3, 6, and 19 of the Convention on the Rights of the Child asserted by the petitioner, while the Commission lacks jurisdiction to rule on a possible violation of said instrument, it may nevertheless be used for the purpose of interpreting the applicable regional norms.

B. Other requirements for admissibility

1. Exhaustion of domestic remedies

35. Article 46(1)(a) of the American Convention provides that, for a complaint lodged with the Inter-American Convention 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 seized 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.

36. In the instant case, the information provided by both parties shows that, without prejudice to the alleged delay in prosecuting it, the criminal case against the persons allegedly responsible for the accident that injured the Morales Vera children was closed by the judgment of guilt of March 5, 2004, which became final on July 7, 2004. [4]

37. The information provided by the parties is also consistent regarding the civil action for compensation and the criminal complaint filed against Ms. Torón Torres for alleged concealment of property.

38. The petitioner invokes an exception to the rule of prior exhaustion of domestic remedies, claiming that an unjustified delay in prosecuting the cases has prevented the alleged victims from obtaining justice within a reasonable period of time. The State requests to the IACHR that the petition be declared inadmissible because the persons responsible for the accident have been found guilty at both the criminal and the civil levels. It adds that responsibility for the effectiveness of the executive proceeding rests with individuals and should not be assigned to the State.

39. The Commission considers that the domestic remedies have been exhausted with regard to the claims in the criminal action. This is not true of the proceeding for collection of the court-ordered civil compensation, where it considers that the legal system has been slow in attending to the petitioner's needs. Given that more than eleven years have elapsed since the accident and that the rule of prior exhaustion must not lead to a halt or delay that would render international action in support of the victims ineffective, [5] the Commission considers exception (c) of Article 46(2) of the American Convention applicable.

40. Note that invoking exceptions to the rule of prior exhaustion under Article 46(2) of the Convention is closely related to determining whether specific rights recognized in said instrument, such as the guarantees of access to justice, may have been violated. However, by their nature and purpose, the provisions of Article 46(2) of the Convention are independent of the Convention's substantive norms. It is therefore necessary to determine separately whether exceptions (a), (b), and (c) to the rule of prior exhaustion apply in 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 a violation of Articles 8 and 25 of the Convention.

2. Filing period

41. Article 32(2) of the IACHR's Rules of Procedure provides that in cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition must be filed within a reasonable period of time, as determined by the Commission. Under this article, in its analysis, the Commission "shall consider the date on which the alleged violation of rights occurred and the circumstances of each case."

42. In the case under consideration, the Commission has established that exception (c) of Article 46(2) applies with respect to the civil proceedings, and it must therefore determine whether, in view of the specific circumstances of the situation submitted for its consideration, the petition was presented within a reasonable period of time. Given the specific circumstances in which the petition was filed, including that the accident occurred in 1998; that the criminal proceeding was closed by final judgment on July 7, 2004; that the criminal complaint for concealment of property is still under investigation; that the civil action for collection has been ineffective; that the petition was submitted to the Commission on April 27, 2001, *i.e.* prior to the rendering of the criminal judgment; and that the State has not made any express representation regarding violation of this treaty requirement, the Commission concludes that the petition under review was presented within a reasonable period of time.

3. Duplication of proceedings and international *res judicata*

43. Nothing in the case file indicates that the subject of the petition is pending in another international proceeding for settlement, nor that it has been previously adjudicated by the Inter-American Commission. Therefore, the requirements of Articles 46(1)(c) and 47(d) have been met.

4. Characterization of the Alleged Facts

44. As the Commission has indicated before in other cases, it is not appropriate at this stage to determine whether or not there has been violation of the American Convention. For the purposes of admissibility, the IACHR need only decide if the allegations state facts that tend to establish a violation of the American Convention, as provided in Article 47(b) of same, and if the petition is "manifestly groundless" or "obviously out of order," in accordance with paragraph (c) of this article. The standard for identifying these extremes is different from the one used to judge the merits of a complaint. At this stage, the IACHR must make a *prima facie* evaluation, which does not imply a preliminary judgment or the rendering

of an opinion on the substance. Its own Rules of Procedure reflect this distinction between the evaluation it must carry out to declare a petition admissible and the one required to determine if there is indeed State responsibility, by establishing clearly differentiated stages for assessment of admissibility and assessment of the merits.

45. On the basis of the facts stated by the petitioner, the Commission considers that the allegations made are neither "manifestly groundless" nor "obviously out of order" and that, if proven, they could constitute violations of the rights recognized in Articles 8 and 25 of the American Convention, in conjunction with Article 1(1) and (2) of said international instrument.

46. In particular, the Commission considers that the alleged difficulties in obtaining the compensation ordered by the courts on account of the injuries caused in an accident to the Morales Vera minors could constitute a possible violation of human rights. The IACHR will have to evaluate in its review of the merits, whether the rules governing criminal proceedings in Guatemala, which require prior conviction in criminal proceedings before determining civil reparation for the victims of crimes, could constitute a presumed violation of the right to judicial protection within a reasonable period of time.^[6] That is particularly relevant considering the average duration of a trial and the special needs that may arise, as in the instant case in which the provision of reparation for the alleged victims is directly related to their possibility of acceding to medical care to address the ailments caused by the damage wrought.

47. Likewise, in dealing with the merits of the case, the IACHR should look to see whether there was an unwarranted delay in the criminal proceedings, given the four years it took to initiate criminal debate, when domestic law requires that such debate begin within 10 days^[7]. Finally, the IACHR should examine whether Article 84 of the Guatemalan Code of Criminal Proceedings is compatible with the American Convention. That Article establishes that the presence of the civil parties during the statement given by the accused depends on the assent of the latter, as it could impair the right to due process and judicial protection.

48. Inasmuch as the aspects of the petition referred to in the preceding paragraph in connection with the allegation of the violation of the rights established in Articles 8 and 25 of the American Convention, in relation with the Articles 1.1 and 2 of the same international instrument are not obviously groundless or out of order, the Commission considers the requirements established in Article 47(b) and (c) of the American Convention to have been met.

49. Lastly, the IACHR considers that the circumstances described by the petitioner do not tend to establish a possible infringement of the rights recognized in Articles 5 and 19 of the American Convention.

V. CONCLUSION

50. The Commission concludes that it has jurisdiction to consider the petition and that it is admissible under Articles 46 and 47 of the Convention.

51. On the basis of the above factual and legal arguments, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this case admissible with respect to Articles 8 and 25 of the American Convention, in conjunction with Article 1(1) and (2) thereof.
2. To declare inadmissible the claims relating to the alleged infringement of the rights recognized in Articles 5 and 19 of the American Convention.
3. To transmit this report to the petitioners and the State.
4. To proceed with its analysis of the merits of the case.
5. To publish this report and include it in the Commission's Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 12th day of the month of November, 2009. (Signed): Víctor E. Abramovich, First Vice-President; Felipe González, Second Vice-President; Sir Clare K. Roberts, Florentín Meléndez, and Paolo G. Carozza, members of the Commission.

[1] The petitioner states that during the trial it was established that Santiago Quidiello had been driving recklessly at high speed in excess of the speed limit and that Laura Patricia Torón Torres de Luna had been driving without a school transportation license, which indicated that she lacked the skill and training to transport children in a public transport vehicle.

[2] This provision of the Criminal Code reads as follows: "Maximum sentence of five years in prison. The sentence may be commuted to a fine of not less than five quetzals and not more than one hundred quetzals per day, based on the circumstances of the offense and the financial situation of the convicted party.

[3] The petitioner indicates that this is established by Article 506 of the Criminal Code of Guatemala.

[4] Special Appeal No. 83-2004, Of. Doc. 2, First Division of the Court of Appeals for Criminal Matters, Drug-trafficking, and Environmental Offenses, Guatemala, July 7, 2004.

[5] I/A Court H.R., *Velásquez Rodríguez v. Honduras Case*. Preliminary Objections. Judgment of June 26, 1987, para. 93.

[6] Articles 124 and 126 of the Guatemalan Code of Civil Procedure establish the following:

Article 124. (Accessory nature and exceptions). In criminal proceedings, reparation may only be exercised while criminal prosecution is pending. If the latter is suspended, reparation shall also be suspended until criminal prosecution resumes, except in respect of the right of the interested party to pursue a civil law complaint in the competent courts.

However, after the arguments have been discussed, a judgment acquitting the accused, or accepting a ground for terminating criminal prosecution, shall also decide a validly brought civil law case.

Article 126. (Alternative exercise). The rules allowing a demand for reparation to be brought in criminal proceedings shall not preclude the exercise of that right before the competent civil bodies. However, once that action has been admitted in criminal proceedings, it may not again be decided in independent civil proceedings, without express renunciation or abandonment of the criminal law instance prior to the discussion of arguments.

Once brought as a civil case, it may not be exercised in criminal proceedings.

[7] Article 344 of the Code of Criminal Proceedings in Guatemala establishes that

When issuing the writ opening the case or, in the case referred to in the last paragraph of the foregoing Article, when the Office of the Attorney General or the accuser present the accusation, the judge shall summon those who have been finally selected to take part in the proceedings, or their representatives, defense lawyers and the Office of the Attorney General, to appear within the jurisdiction period of ten days before the designated court, designate an address at which to receive notifications and offer testimony.

If the trial is to be held at a place other than that of the intermediary proceedings, the summons period shall be extended by a further five days.