

OEA/Ser.L/V/II.
Doc. 42
3 July 2014
Original: English

REPORT No. 38/14

PETITION 1089-06

REPORT ON ADMISSIBILITY

LEONARDO RENÉ MORALES ALVARADO Y OTROS
HONDURAS

Approved electronically by the Commission on July 3, 2014

Cite as: IACHR, Report No. 38/14, Petition 1089-06. Admissibility. Leonardo René Morales Alvarado Et Al. Honduras. July 3, 2014.



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ADMISSIBILITY
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I. SUMMARY

1. On October 12, 2006, the Inter-American Commission on Human Rights (hereinafter, “Commission” or “IACHR”) received a petition lodged by Felipe Arturo Morales Cárcamo (hereinafter, “the petitioner”), alleging that the Republic of Honduras (“the State” or “the Honduran State”) is internationally responsible for violations of the right to due process and for unwarranted delays in the criminal case brought over the death of the child Leonardo René Morales Alvarado, as well as the injuries suffered by his mother, Sandra Marlen Alvarado de Morales, and his brother, Felipe Alejandro Morales Alvarado (hereinafter, also “the alleged victims”). In essence, the petition alleges that the irregularities committed in the course of the case and the more than 11-year delay in the case constitute a denial of justice.

2. The State, for its part, objects to the petition’s admissibility, maintaining that domestic remedies have not been exhausted, as the criminal case being brought against the person responsible for the death of one of the alleged victims and the injuries to the other two has not ended. The State further indicates that the protraction of the case can be attributed to procedural actions taken by the parties. It also claims that the petitioner has not exhausted the remedies available in civil jurisdiction to receive compensation for the damages suffered by the alleged victims.

3. Without prejudging the merits of the matter, after analyzing the parties’ positions and the issue of compliance with the requirements established in Articles 46 and 47 of the American Convention, the Commission decided to declare the claim to be admissible for the purpose of examining the alleged violation of Articles 8 and 25 (right to a fair trial and judicial protection) and Article 5 (right to humane treatment) of the Convention, in conjunction with Article 1(1). It also decided to provide notice to the parties of the report and order its publication in the Commission’s annual report to the OAS General Assembly.

II. PROCESSING BY THE IACHR

4. On October 12, 2006, the Commission received the petition and recorded it under number 1089-06. On July 2, 2008, the IACHR forwarded the pertinent sections of the petition to the State so that it could present its observations. On September 8, 2008, the State requested an extension; this was granted by the IACHR by means of a note dated October 20, 2008. On November 23, 2008, the State’s response to the petition was received; this was forwarded to the petitioner on January 6, 2008. On October 24, the Commission received the petitioner’s observations, which were forwarded to the State on January 9, 2009. The State’s response to this document was received on February 6, 2009.

5. Later on, information was received from the petitioner on February 5, 2009, and February 2, 2011. Information was received from the State on December 10, 2010. On February 18, 2011, the petitioner’s last communication was forwarded to the State; however, the Commission has not received any response to it.

III. POSITIONS OF THE PARTIES

A. Petitioner’s position

6. The petitioner maintains that on Sunday, October 17, 1999, at 8:30 a.m., his wife, Sandra Marlen Alvarado, and their two youngest children, Leonardo René Morales Alvarado and Felipe Alejandro Morales Alvarado, were heading to the Sunday service at their church on the road leading from Tegucigalpa

to Valle de Ángeles when they were hit by a Nissan Pathfinder SUV, which was owned by the Supreme Court of Justice of the Nation and assigned to Justice Irma Violeta Suazo de Rosa, whose driver was inebriated. As a result of this occurrence, the 7-year-old child Leonardo R. Morales A. died the following day from severe brain injuries, and the other two occupants of the vehicle, his mother and brother, were injured. In addition, the vehicle, which belonged to the petitioner, was totally destroyed. The three occupants of the vehicle that caused the collision did not suffer injuries.

7. The competent authorities who showed up at the scene of the occurrence certified that the driver of the SUV that hit the vehicle in which the Morales Alvarado family was traveling was in a state of complete inebriation and had been speeding. The petitioner emphasizes that the person who was driving the SUV that caused the damages was not an official or employee of the judiciary, nor was there any reason for him to be driving a government vehicle on an off day during non-working hours, a vehicle that, moreover, had had its assigned plates removed. The petitioner attributes these irregularities to the fact that the driver of the Nissan Pathfinder SUV had a romantic relationship with the daughter of the Justice to whom the vehicle had been assigned.

8. The petitioner charges that there have been a number of irregularities in the criminal proceedings initiated as a result of the events described above, and that in general there has been an unwarranted delay in the issuance of a final judgment. This case (File 2144-02) was handled at first instance by the First Criminal Trial Court of the Department of Morazán.

9. In this regard, the petitioner indicates that the defendant's conduct was initially considered aggravated manslaughter, and a prison commitment order was issued; this was later modified to reclassify the conduct as simple manslaughter (even though the defendant was in a state of inebriation at the time of the occurrence). This allowed the accused to be released on bail and later to leave the country for good on September 17, 2000, as certified by the General Office on Population and Immigration Policy.

10. The petitioner indicates that even though this criminal case was initiated in October 1999, the court of first instance did not issue a ruling until July 6, 2006. He charges, moreover, that the parties were not notified of this judgment until August 2008—the very month after the Inter-American Commission began processing the petition and forwarded it to the State. In other words, the judgment of first instance was notified nine years after the occurrences. The petitioner claims that this action by the court is completely irregular, and that it is inexplicable, if the judgment was handed down in mid-2006, that neither of the parties (including the Public Prosecutor's Office) was notified until two years later, especially when the alleged victims' lawyer was going to the court on a regular basis to verify the status of the case. This judgment by the court of first instance was affirmed in substance by the First Court of Appeals through a decision dated March 12, 2009, which was the object of a third-instance appeal filed by the accused's legal defense on June 4 of that year.

11. This last appeal apparently had not yet been decided as of February 2, 2011, the date of the petitioner's last communication; thus, he alleges that the criminal case brought over the occurrences of October 1999 had gone on for more than 11 years without a final decision and without the possibility of ensuring that the accused would carry out his sentence, as he was still a fugitive from justice.

12. The petitioner attributes the reported procedural irregularities, which in his opinion took place from the beginning of the case, to the interference of then-Justice Irma Violeta Suazo de Rosa into the actions of the judicial authorities in charge of the case, and to the fact that she was the wife of the then-Attorney General of the State.

13. Finally, the petitioner maintains that a firm and final decision in a criminal proceeding is a procedural prerequisite to subsequently bringing suit in civil jurisdiction.

B. State's position

14. The State notes that on June 7, 2006, the court of first instance issued a conviction against the person responsible for the traffic incident that caused harm to the alleged victims, and it agrees with the petitioner in indicating that the conviction was appealed and that an appeal of this decision was then lodged with a court of third instance. In this regard, in its last communication of December 2010 the State indicates that the appeal to the higher court lodged by the accused's legal defense on June 4, 2009, was still pending a decision.

15. The State alleges that the reported occurrences are in the process of being heard by the relevant domestic authorities and that it is not up to the Inter-American Commission take a position on them. It indicates, moreover, that if the petitioner believes there have been flaws in the actions of the various criminal courts in charge of the case, he should make use of the remedies available under domestic law and not air these matters before an international organization.

16. The State further indicates that in the course of the case both parties have had ample opportunities to act and to seek the remedies they have considered pertinent, both in the trial court and the appeals court. In this regard, in its first communication the State attributed the prolongation of the criminal case to the procedural conduct of the parties lodging the appeals established by law.

17. The State asks the Inter-American Commission to declare this petition inadmissible as domestic remedies have not been exhausted, based on the fact that the criminal case allegedly has not yet ended, and because it believes that the petitioner also had to have exhausted the remedies available in civil jurisdiction to obtain compensation to indemnify him for the damages to his family and property.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY**A. Commission's competence *ratione materiae*, *ratione personae*, *ratione temporis*, and *ratione loci***

18. The petitioner is entitled, in principle, under Article 44 of the American Convention, to lodge complaints with the IACHR. The petition names, as alleged victims, individual persons with respect to whom the Honduran State has committed to respect and guarantee the rights enshrined in the American Convention and in other international instruments. Honduras has been a State party to the American Convention since September 8, 1977, when it deposited its instruments of ratification. Therefore, the Commission has competence *ratione personae* to examine the petition. The Commission also has jurisdiction *ratione loci*, as the petition alleges violations of rights protected in the American Convention that are said to have occurred within Honduran territory.

19. The Commission has competence *ratione temporis* inasmuch as the obligation to respect and guarantee the rights protected by the American Convention were already in effect for the State on the date in which the incidents alleged in the petition are said to have occurred. Moreover, the Commission has jurisdiction *ratione materiae*, given that the petition complains of possible violations of human rights protected by the American Convention

B. Admissibility requirements**1. Exhaustion of domestic remedies**

20. Article 46(1)(a) of the American Convention requires exhaustion of available remedies under domestic law, in accordance with generally recognized principles of international law, as a prerequisite for admitting claims involving violations of rights established in the American Convention. For its part, Article 46(2) of the Convention establishes that the requirement of prior exhaustion of domestic remedies is not applicable when (i) 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; (ii) the party alleging violation of his or her

rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or (iii) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

21. In the case at hand, the State maintains that the petition should be decided inadmissible as domestic remedies have not been exhausted, on grounds that the criminal case prosecuted in domestic courts has yet to come to an end and that the petitioner also had to exhaust civil remedies to obtain compensation for the damages incurred.

22. The Inter-American Commission reiterates that, in order to analyze whether the requirement to exhaust domestic remedies has been met, it must determine the appropriate remedy that must be exhausted under the circumstances, this being understood as the remedy that could address the legal right that has been infringed. In this regard, the Commission observes that the facts laid out essentially encompass the violation of legal rights, such as the right to life and to humane treatment, as a result of a traffic incident classified by domestic courts as aggravated manslaughter.¹ Therefore, as the Commission has consistently found in previously decided cases, the criminal process is the best way to clarify the facts, judge those responsible, and establish appropriate criminal penalties, as well as to facilitate other types of monetary reparations.² This process must be taken on by the State with all seriousness and must be pursued diligently so that it is concluded within a reasonable time frame.³

23. In the case at hand, the traffic incident that led to the death of the child Leonardo René Morales and the injuries to his mother and brother took place on October 17, 1999; the judgment of the court of first instance in the ongoing criminal case was notified to the parties in August 2008—nearly nine years later; and as of February 2011, the date of the last communication from the petitioner, a final judgment had yet to be handed down in the case. The State has not indicated that the facts under investigation are particularly complex, nor does such a circumstance emerge from the case file. To the contrary, the Commission observes that the presumed culprit was identified from the beginning and evidence was collected for him to be tried. The State, for its part, has not provided specific information to date that would suggest that the appeal to the court of third instance lodged by the accused's legal defense has been effectively resolved, even though it had the procedural opportunity to do so.

24. In terms of the possibility of turning to civil courts to repair the harm caused by the referenced traffic incident, the State itself indicates that “the applicable legislation establishes that one the judgment handed down in the relevant criminal case is final, the interested parties may exercise the civil actions they may deem appropriate under domestic law.”⁴ In this regard, the Inter-American Commission notes that the very object of this case is the alleged unwarranted delay on the part of the competent criminal courts to issue a firm and final ruling in the case being pushed by the petitioner; therefore, in the Commission's opinion, it would not be reasonable to demand the exhaustion of civil jurisdiction as a prerequisite for admissibility of this petition, precisely because that would presumably be contingent on the final decision in the criminal case. Hence, as the Inter-American Court has indicated, “[t]he rule of prior exhaustion must never lead to a halt or delay that would render international action in support of the [...] victim ineffective.”⁵

¹ Annexes to P-1089-06: Judgment of the Criminal Trial Court of the Judicial Division of Tegucigalpa, case brought against Patrick Douglas Guilbert Fortin, handed down on June 7, 2006.

² See, among others: IACHR, Report No. 56/13, P-80-02, Admissibility, Herminio Deras García et al., Honduras, July 16, 2013, para. 34; IACHR, Report No. 14/11, P-1347-07, Admissibility, Orlando Olivares et al. (Deaths in the Vista Hermosa Prison), Venezuela, March 23, 2011, para. 32; IACHR, Report No. 136/09, Petition P-321-05, Admissibility, María Inés Chinchilla Sandoval, Guatemala, November 13, 2009, para. 47; IACHR, Report No. 22/09, Petition 908-04, Admissibility, Igmarr Alexander Landaeta Mejías, Venezuela, March 20, 2009, para. 45.

³ IACHR, Report No. 62/00, Case 11.727, Hernando Osorio Correa, Colombia, October 3, 2000, para. 24.

⁴ State of Honduras, Note No. 1188-DGAE.08, dated November 19, 2008, received at the IACHR on November 23, 2008.

⁵ Inter-American Court of Human Rights, *Case of Velásquez-Rodríguez*. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1, paragraph 93. *Case of Godínez-Cruz*. Preliminary Objections. Judgment of June 26, 1987. Series C No. 3, paragraph 93. As

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25. Therefore, the Inter-American Commission concludes that the exception to the exhaustion rule established in Article 46(2)(c) of the American Convention applies, as there is an unwarranted delay in the decision regarding domestic remedies.

26. The Commission reiterates that invoking the exceptions to the rule of exhaustion of domestic remedies established in Article 46(2) of the Convention is closely tied to the determination of possible violations of certain rights therein enshrined, such as the guarantees of access to justice. However, Article 46(2), given its nature and purpose, is a norm with autonomous content vis-à-vis the substantive provisions of the Convention. Therefore, the determination as to whether the exceptions to the rule of exhaustion of domestic remedies established in paragraphs (a), (b), and (c) of that norm are applicable to the case in question should be made prior to and separate from the analysis of the merits, as it depends on a different standard of evaluation than that used to determine whether Articles 8 and 25 of the Convention were violated. It should be clarified that the reasons for the apparently unwarranted delay in bringing the domestic criminal proceedings to an end and the alleged procedural irregularities will be analyzed by the Inter-American Commission during the merits stage in the processing of this petition.

2. Time period for lodging the petition

27. The American Convention establishes that for a petition to be admissible to the Commission, it must be lodged within a period of six months from the date on which the party alleging violation of his or her rights was notified of the final judgment. In the claim under analysis, the IACHR has established that the exceptions to exhaustion of domestic remedies under Article 46(2)(c) of the American Convention apply. On that point, Article 32 of the Commission's Rules of Procedure establishes that in those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.

28. In the case under examination, the petition was received on October 12, 2006, and the facts underlying the claim are based primarily on the domestic criminal case that has been pending for more than a decade, since 1999. Bearing in mind that the criminal proceedings began on October 17, 1999, with the official record of the First Criminal Trial Court on duty, and that as of the date of approval of this report the State has not provided specific information indicating that the criminal proceedings actually came to an end, the IACHR concludes that the petition was lodged within a reasonable time period, and therefore it believes that the requirement established in Article 46(1)(b) of the Convention has been met.

3. Duplication of proceedings and international *res judicata*

29. There is no indication in the record that the subject of this petition is pending settlement in another international proceeding or that the petition duplicates one previously examined by the Commission or another international organization. Therefore, the requirements established in Articles 46(1)(c) and 47(d) of the Convention have been satisfied.

4. Characterization of the facts alleged

30. For purposes of admissibility, the Commission must decide whether the facts that have been alleged could constitute a violation of rights, as spelled out in Article 47(b) of the American Convention, or whether the petition is "manifestly groundless" or "obviously out of order," in line with subparagraph (c) of that article. The criterion for evaluating these requirements differs from that used to rule on the merits of a

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the Commission has indicated, remedies that have suffered undue delays in processing lose their effectiveness. See, for example, IACHR, Report No. 27/99, Admissibility, Case 11.697, Ramón Mauricio García- Prieto Giral, El Salvador, March 9, 1999, paragraph 47.

petition; the Commission must perform a *prima facie* evaluation to determine whether the petition establishes the basis for a possible or potential violation of a right guaranteed by the Convention, but not to establish the existence of a violation of rights. This determination constitutes a preliminary analysis and does not imply a prejudgment on the merits of the matter.⁶

31. Moreover, neither the American Convention nor the IACHR Rules of Procedure require that the petitioner identify the specific rights alleged to have been violated by the State in the matter submitted to the Commission, although the petitioners may do so. It is up to the Commission, based on the system's case law, to determine in its admissibility reports what provision of the relevant inter-American instruments is applicable and could establish a violation if the facts being alleged are proved with sufficient evidence.

32. Based on the elements of fact and law provided by the parties and the nature of the matter before it, the IACHR considers that the facts alleged by the petitioners could constitute possible violations of the rights protected under Articles 8 and 25 of the American Convention, to the detriment of Felipe Arturo Morales Cárcamo (besides the petitioner, the spouse and father of the victims), Sandra Marlen Alvarado de Morales, and Felipe Alejandro Morales Alvarado (surviving victims of the occurrence), in conjunction with Article 1(1) of the same treaty. The Commission will also analyze, in the merits stage, the possible application of Article 5 with relation to the effects of the alleged denial of justice.

V. CONCLUSIONS

33. Based on the considerations of fact and law set forth, and without prejudging the merits of the matter, the Inter-American Commission concludes that the petition meets the admissibility requirements laid out in Articles 46 and 47 of the American Convention and, therefore,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the petition admissible with regard to the alleged violations of the rights established in Articles 5, 8, and 25 of the American Convention, in conjunction with Article 1(1) of that instrument.
2. To provide notice to the parties of this decision.
3. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Approved by the Inter-American Commission on Human Rights on the 3rd day of the month of July, 2014. (Signed): Tracy Robinson, President; Rose-Marie Belle Antoine, First Vice President; Felipe Gonzalez, Second Vice President; José de Jesús Orozco Henríquez, Rosa María Ortiz, Paulo Vannuchi and James L. Cavallaro, Commissioners.

⁶ See, in general: IACHR, Report No. 12/10, Case 12.106, Admissibility, Enrique Hermann Pfister Frías and Lucrecia Pfister Frías, Argentina, March 16, 2010, para. 46; IACHR, Report No. 10/10, Petition No. 214-08, Admissibility, Koempai et al., Suriname, March 16, 2010, para. 43.