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REPORT No. 35/16
PETITION 4480-02
REPORT ON ADMISSIBILITY

CARLOS MANUEL VERAZA URTUSUÁSTEGUI
MEXICO

Approved by the Inter-American Commission on Human Rights on July 29, 2016.

Cite as: IACHR, Report No. 35/16, Petition 4480-02. Admissibility. Carlos Manuel Veraza Urtusuástegui. Mexico. July 29, 2016.



REPORT No. 35/16¹
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ADMISSIBILITY REPORT
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I. SUMMARY

1. On November 12, 2002, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the IACHR”) received a petition filed by Mr. Carlos Manuel Veraza Urtusuástegui (hereinafter “the petitioner” or “the alleged victim”) on his own behalf alleging the international responsibility of the United Mexican States (hereinafter “the State” or “Mexico”) for the violation of his rights to property and to a fair trial, fundamentally for the refusal and unwarranted delay on the part of the judicial authorities and the Head of Government of the Federal District to provide him with certain sums of money as compensation for the expropriation of a lot.

2. The petitioner argues that the facts alleged constitute a violation of the following rights guaranteed by the American Convention on Human Rights (hereinafter the “American Convention”): the right to a fair trial, freedom from ex post facto laws, the right to protection of honor and dignity, the right to private property, the right to judicial protection, as well as the duty of the State to respect and ensure the rights of the persons under its jurisdiction. For its part, the State argues that the petition should be found inadmissible because it does not state facts that, if true, tend to establish violations of human rights. It adduces that the petitioner seeks to have the Commission review the actions of the domestic judicial organs, sitting as a court of fourth instance. Moreover, it argues that the petitioner failed to exhaust domestic remedies, considering that a proceeding was pending when he filed the petition.

3. Without prejudging on the merits, after analyzing the positions of the parties and pursuant to the requirements set forth in Articles 46 and 47 of the American Convention, the Commission decides to find the case admissible for the purposes of examining the arguments in relation to the alleged violation of the rights enshrined in Articles 7 (personal liberty), 8 (fair trial), 11 (privacy), 21 (private property), and 25 (judicial protection) of the Convention in connection with the obligations established at Article 1(1) of the same instrument. It also decided to find the petition inadmissible in relation to the alleged violation of Article 11 (protection of honor and dignity) of the same instrument. The Commission also 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. PROCEEDINGS BEFORE THE COMMISSION

4. On November 12, 2002, the Commission received the petition and assigned it number 4480-02. On October 15, 2003, the IACHR forwarded the relevant parts of the petition to the State, asking that it submit its answer within two months, in keeping with Article 30(3) of the IACHR’s Rules of Procedure then in force. The State’s answer was received on February 17, 2004. That communication was duly forwarded to the petitioner.

5. The IACHR received additional observations from the petitioner on May 11 and 20, 2004, June 22, 2004, September 7, 2004, February 15, 2005, August 5, 2005, September 1, 2006, December 5, 2006, September 8, 2007, December 12, 2007, June 19, 2008, January 21, 2009, June 12, 2009, August 26, 2009, June 7, 2010, July 26, 2010, and January 23, 2013. The foregoing communications were duly forwarded to the State of Mexico.

¹ In keeping with Article 17(2)(a) of the Commission’s Rules of Procedure, Commissioner José de Jesús Orozco Henríquez, of Mexican nationality, did not participate in the debate or decision in this matter.

6. The IACHR also received additional observations from the State on May 18, 2004, June 3, 2004, November 24, 2004, January 20, 2006, May 23, 2006, October 12, 2006, August 2, 2007, November 1, 2007, April 27, 2009, July 29, 2009, and July 16, 2013, all of which were duly forwarded to the petitioner.

III. THE POSITIONS OF THE PARTIES

A. The position of the petitioner

7. By way of background the petitioner indicates that on June 29, 1968, the President of the Republic issued an expropriation decree on grounds of public utility that affected the property called "Tecaxi," situated in the southern zone of Mexico City, and owned by Mr. Ángel Veraza Villanueva (the father of the alleged victim, who is the executor of his estate. Hereinafter "the petitioner's father"). He notes that in 1974, Mr. Ángel Veraza Villanueva filed a request with the Office of the Head of the Department of the Federal District (Jefatura del Departamento del Distrito Federal) to overturn the expropriation decree, since the property was not identified within the legal term of five years for the purposes of public utility for which it was expropriated, as established in Article 9 of the Law on Expropriation. On November 3, 1975, the Director General for Legal Matters and Government issued an opinion that revoking it was inadmissible on procedural grounds. Against that opinion, the petitioner filed a motion before the Contentious-Administrative Court of the Federal District, which on July 7, 1982 ordered the Chief of the Department for the Federal District to resolve the request made.

8. In carrying out that decision, on July 28, 1987, the Director General for Legal Matters and Legislative Studies decided that the revocation was inadmissible on procedural grounds, since the property affected was indeed used for the public utility purposes for which it was expropriated. The alleged victim filed a complaint appeal (*recurso de queja*) against that ruling; it was rejected on January 31, 1989. The petitioner filed an *amparo* action against that decision before the First District Judge for Administrative Matters in the Federal District, who ruled in favor of Mr. Veraza. In carrying out that decision, on August 17, 1989, the Court for Contentious-Administrative Matters of the Federal District ordered the authority responsible to carry out the judgment of July 7, 1982. On April 6, 1990, the Chief of the Federal District once again denied the request for revocation. The petitioner filed a motion for annulment (*recurso de nulidad*) against that decision before the Court for Contentious-Administrative Matters; it was granted on February 28, 1991. The Court ordered the authority to issue a new ruling in which it gave legal consideration and weight to the evidence introduced by the petitioner. In this new ruling of August 5, 1991, restitution of the property was rejected. The ruling was challenged by the petitioner before the Court for Contentious-Administrative Matters of the Federal District, which, by judgment of August 14, 1992, considered the action well-founded and declared "the annulment of the administrative order, for the purpose of issuing a new one declaring the restitution of the property expropriated to be procedurally admissible."

9. According to the petitioner, given that said Court does not have the powers to enforce its decisions, once available remedies were exhausted he turned to the federal justice system for protection. Accordingly, on February 10, 1998, the petitioner brought an *amparo* action filed as *amparo* case 94/98, which was granted on March 31, 1998. The judgment became final on April 29, 1998, as it was not challenged by the responsible authority.

10. The petitioner notes that as the Department of the Federal District did not carry out the judgment, he pursued an ancillary proceeding for enforcement of a judgment. In the consideration of that motion, it was reported that it was "physically and legally impossible to restore to the injured party the full enjoyment of the individual guarantee violated and reestablish the state of affairs prior to the violation that is the subject of the constitutional litigation ... since the building situated in the Delegación Tlalpan, Federal District ... on the lot called 'Tecaxi,' which was expropriated by Presidential Decree of June 29, 1968, ... is at present occupied by the National Institute of Anthropology and History, as it is public domain."

11. In view of the foregoing, on October 17, 1998, the Second Chamber of the Supreme Court of Justice of the Nation (hereinafter “the Supreme Court”) found the ancillary proceeding for enforcement of a judgment to be moot for lack of subject matter, and the petitioner filed a motion for the payment of damages or substitute performance. On March 17, 1999, the First District Judge for Administrative Matters of the Federal District ordered the Head of Government of the Federal District to pay the sum of \$176,500,000 Mexican pesos (approximately US\$18,233,471.07 at the time), for “compensation for damages caused to a private person as it is not possible to restore to him the use and enjoyment of the property of which he was illegally dispossessed.”

12. That order was affirmed on August 16, 1999, and the judge hearing the matter proceeded to require the authority responsible to comply with it. In this context, on December 13, 2000, partial payment was made of \$2,788,326.10 pesos to the petitioner, which represents, according to the petitioner, less than 2% of the total amount ordered by the First District Judge for Administrative Matters.

13. The petitioner argues that once the foregoing payment was made, the Head of Government made continuous statements to the media characterizing the ruling of the federal judiciary as “unjust,” and declaring that in this case a fraud was committed by the private person.

14. The petitioner indicates that in the face of the reiterated failure of the Head of Government of the Federal District to pay the compensation, he filed on January 7, 2000 an ancillary claim for enforcement of judgment (case 62/2000). On March 23, 2004, the Supreme Court determined that the failure to comply with the order issued in *amparo* proceeding 94/98 was “excusable” given that said judgment is not legally enforceable, and ordered that the record in that proceeding be remanded for the *amparo* judge to issue a new judgment. It also ordered that a new appraisal be done of the value of the disputed property, indicating that compensation should be set based on the historical value of the property in 1975, when the authority should have decreed the restitution requested.

15. On this point, the petitioner argues that the Supreme Court retroactively applied a constitutional amendment that came into force in 2001, repudiating the judgments that had previously ordered the appraisal of said property at current commercial values, and that these had already become *res judicata*. He alleges that said conduct is in violation of the principle of juridical security and non-retroactivity, as well as the right to property.

16. He indicates that once the appeals filed by both parties were resolved on October 17, 2005, the Supreme Court ruled that “the retrospective commercial value of the Tecaxi property ... in the conditions in which it was found on November 3, 1975, converted to a new monetary unit and updated to December 19, 2000, is \$43,428,863.10 pesos (approximately US\$ 4,613,322.45 at the time) for damages or specific performance of the final judgment handed down in indirect *amparo* action 94/1998.”

17. On November 4, 2005, the First District Judge for Administrative Matters of the Federal District ordered the Head of Government of the Federal District to pay the sum of \$40,640,537 pesos (approximately US\$ 3,789,515.72 at the time); and on December 8, 2005, he ordered that the sum of \$9,375,771.88 pesos (approximately US\$894,725.86 at the time) be paid, upon updating the payment date. Finally, on December 22, 2005, once the above-noted sums were paid, and discounting the partial payment made in the year 2000, the District Judge found that the judgment had met with compliance.

18. The petitioner argues that during the years of the proceeding, the State implemented a policy of defamation and persecution against him in the media, and through the Mexico City prosecutors’ office (*Procuraduría de Justicia del Distrito Federal*). In this regard, he notes that public officials referred to the alleged victim in the media using pejorative terms. In addition, he alleges that, from November 2003 to October 2005, the Public Ministry brought five criminal actions against him for the alleged offense of fraud

upon the Federal District, and requesting his apprehension. That order was struck down on each occasion, yet it would have represented an onerous and unjustified procedural burden. Finally, on October 14, 2005, once again a preliminary inquiry was ordered and on January 23, 2006, the petitioner was detained by agents of the Judicial Police of the Federal District.

19. He indicates that he was deprived of liberty for seven months, from January 23, 2006 to August 18, 2006, when the Fifth Collegial Court for Criminal Matters of the First Circuit ordered the arrest warrant cancelled, considering that “the evidence produced in the proceeding is insufficient to consider the *corpus delicto* to have been shown.” With respect to this point, the petitioner refers to the existence of a context of persecution against him through improper use by the Government of the Federal District of the institution of the Public Ministry, so as to not comply with the order to pay him. The petitioner also indicates that he turned to the State Commission on Human Rights of the Federal District, which issued recommendations favorable to his complaint.

20. In summary, the petitioner argues that there is an unwarranted delay of more than 30 years in resolving the administrative and judicial proceedings that were begun as early as 1975 and concluded in October 2005; that once resolved they modified a judgment that was *res judicata*, violating his right to judicial protection, to private property, and to be free from ex post facto laws; that as he was unjustly deprived of liberty for seven months without having committed any offense whatsoever, and in view of the defamatory statements by the State, his rights to judicial protection and to honor and dignity were violated.

B. The position of the State

21. First, the Mexican State argues that at the time when the petition was filed with the IACHR domestic remedies had not been exhausted, since several means of defense pursued by the petitioner were still pending resolution. It adds that once those remedies were exhausted, the decisions were favorable to the petitioner; accordingly there is no reason for the Commission to continue examining this matter.

22. With respect to the alleged violations of Articles 8 and 25 of the American Convention, it adduces that all domestic remedies that were activated on occasion of the expropriation of the Tecaxi property were reviewed by competent courts existing prior to the facts; by judges duly trained and authorized to issue the judgments referred to; by judges equally trained and authorized to review the judgments of first instance, and by judges of federal bodies different from the local ones, which confers independence and objectivity on the resolution of the matter.

23. It also notes that by checks dated December 7 and 12, 2005, as ordered by the District Judge, the total payment was made to the alleged victim, for damages stemming from the expropriation of the Tecaxi property.

24. The State further argues that there was no unwarranted delay in the processing of the matter domestically, as the time that elapsed from the filing of the remedies and their respective resolutions have been reasonable, mindful of the workload of the courts, the activity of the petitioner, and the complexity of the matter. It adds that in the instant case there was not a single proceeding that lasted more than 30 years, but rather many motions were filed with different judicial authorities.

25. With respect to the judgment of the Supreme Court on ancillary procedure for enforcement of judgment 62/2000, the State indicates that it was issued in a reasonable time, mindful of the complexity of the matter, as it had to do with a dispute over a claim for payment of an excessive sum from the public treasury. It adds that the amendment to Article 107 of the Constitution – which grants the Supreme Court the power to examine when the performance of *amparo* judgments may be excused – was not applied retroactively. It argues that said power of the Supreme Court cannot be considered to be conditioned on Article 107 of the Constitution; otherwise one would be asserting that the decisions made prior to the reform by the District Courts are binding on the Supreme Court, which is not legally possible. It argues that the Commission is not competent to review the meaning of the judgments handed down by the Supreme Court of

Mexico, since the jurisdiction of international human rights law is complementary and subsidiary, but it does not review proceedings exhausted domestically.

26. As regards to the alleged existence of a policy to defame and persecute the petitioner, the State argues that the various proceedings unfolded in keeping with the respective rules, and that they were carried out in proper time and form, and in keeping with what is established by the laws of Mexico and the American Convention. It also notes that the Office of the Attorney General has the duty to investigate all facts brought before it for its consideration so as to determine whether a criminal offense has been committed; but a criminal offense does not constitute a violation of human rights. It adds that the Office of the Attorney General for the Federal District has determined "not to bring a criminal action" against the alleged victim for lack of evidence, hence the petition is set aside.

27. Finally, it indicates that in the event that the petitioner feels offended by alleged statements made by the Head of Government of the Federal District, he has adequate remedies for asking that the facts indicated, presumably targeting him, be investigated, and that the acts indicated, presumably against him, be punished, as appropriate.

28. With the foregoing, the Mexican State concludes that the filing of the petition was inadmissible, for it did not meet the requirements in the provisions that govern that inter-American system in relation to exhaustion of domestic remedies. In addition, the petition is inadmissible at this time and should be archived, as provided for in Article 48(b) of the Americana Convention, according to which if the grounds for the petition do not exist or subsist, the IACHR may archive it.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

A. Competence

29. The petitioner is authorized, in principle, by Article 44 of the American Convention to file petitions with the Commission. The petition indicates that the alleged victim is a natural person with respect to whom the State of Mexico undertook to respect and guarantee the rights enshrined in the American Convention. As regards to the State, the Commission notes that Mexico has been a state party to the American Convention since March 24, 1981, the date on which it deposited its instrument of ratification. Therefore the Commission is competent *ratione personae* to examine the petition. The Commission is also competent *ratione loci* to take cognizance of the petition as it alleges violations of rights protected by the American Convention in the territory of Mexico, a state party to that treaty.

30. The Commission is competent *ratione temporis* insofar as the obligations to respect and ensure the rights protected in the American Convention were already in force for the State on the date the facts alleged in the petition are said to have taken place. Finally, the Commission is competent *ratione materiae*, because the petition alleges possible violations of human rights protected by the American Convention.

B. Admissibility

1. Exhaustion of domestic remedies

31. Article 46(1)(a) of the American Convention requires the prior exhaustion of remedies available in the domestic jurisdiction in keeping with generally recognized principles of international law as a requirement for the admission of claims alleging violation of the American Convention. The purpose of this requirement is to afford the domestic authorities an opportunity to take cognizance of the alleged violation of a protected right and, if appropriate, to resolve the situation before it is heard by an international mechanism.

32. The State alleged that when the petition was filed there were proceedings under way that were being handled effectively by the state authorities. It also affirmed that there has not been an

unwarranted delay in those proceedings, as it is a complex matter and the authorities in charge of it have not engaged in excessive delays. In a submission filed October 12, 2006, the State acknowledged final exhaustion of domestic remedies “as the situation raised was resolved pursuant to the remedies and institutions of existing Mexican law, and with the favorable resolution for Mr. Veraza Urtusuástegui, of the situation that he alleged negatively impacted him.” With that, the State argues that the petition became inadmissible, as the grounds on which it was brought ceased to exist.

33. The Commission observes that according to the information provided by the parties, domestic judicial remedies were finally exhausted with the Supreme Court decision of October 17, 2005, by which it ruled on complaint appeal 11/2004, ordering the payment of the corresponding compensation. In this respect, the Commission reiterates its doctrine according to which the analysis of the requirements set out at Articles 46 and 47 of the Convention should be made in light of the situation at the time of the ruling on the admissibility or inadmissibility of the claim. It is very common, during the processing of a matter, for changes to occur in the status of exhaustion of domestic remedies. Nonetheless, the system of petitions and cases ensures that both the State and the petitioner have the full opportunity to submit information and arguments on this point.²

34. With regard to the alleged arbitrary deprivation of liberty, according to the information provided, on August 18, 2006, the Fifth Collegial Court for Criminal Matters of the First Circuit ordered the arrest warrant cancelled.

35. Therefore the Commission concludes that in the instant case, domestic remedies were pursued and exhausted in keeping with Article 46(1)(a) of the American Convention.

2. Timeliness of the petition

36. Article 46(1)(b) of the American Convention establishes that for a petition to be admissible by the Commission, it must be filed within six months of the date on which the alleged victim has been notified of the final decision.

37. The petition before the IACHR was filed on November 12, 2002, and domestic remedies were exhausted on October 17, 2005, and August 18, 2006. Therefore, the exhaustion of domestic remedies occurred while the case was being examined for admissibility. In these circumstances, complying with the requirement of filing the petition within a reasonable time is intrinsically tied to the exhaustion of domestic remedies and, therefore, it should be considered to have been met.³

3. Duplication of procedures and international *res judicata*

38. It does not appear from the record that the subject matter of the petition is pending before any other procedure for international settlement or that it reproduces a petition already examined by this or any other international body. Therefore, the grounds of inadmissibility established at Articles 46(1)(c) and 47(d) of the Convention do not apply.

4. Colorable claim

39. For purposes of admissibility, the Commission must decide whether the facts alleged, if true, tend to establish a violation of rights, as stipulated in Article 47(b) of the American Convention, or whether the petition is “manifestly groundless” or “obviously out of order,” as per Article 47(c). The criterion for analyzing admissibility is different from that used to analyze the merits of a petition, given that the

² IACHR, Report No. 15/15, Petition 374-04. Admissibility. Members of the Trade Union of Workers of the National Federation of Coffee Growers of Colombia. March 24, 2015, para. 39.

³ IACHR, Report No. 46/15, Petition 315-01. Cristina Britez Arce. Argentina. July 28, 2015, para. 47.

Commission performs only a *prima facie* analysis to determine whether the petition establishes the apparent or possible violation of a right guaranteed by the American Convention. It is a summary analysis that does not entail prejudging or issuing a preliminary opinion on the merits.

40. In addition, neither the American Convention nor the IACHR's Rules of Procedure require that the petitioner identify the specific rights allegedly violated by the State in the matter submitted to the Commission. It is up to the Commission, based on the case-law of the system, to determine in its reports on admissibility which provision of the relevant inter-American instruments is applicable, and in respect of which a violation could be established if the facts alleged are proven by sufficient evidence.

41. In the instant matter the State argues that the facts that are the subject matter of the petition not only do not tend to establish a violation of the rights enshrined in the American Convention, but in addition, that all the judicial proceedings were resolved favorably for the petitioner. It adds that the petition should be found inadmissible insofar as the IACHR is not authorized to review domestic judicial decisions handed down based on considerations of legality and justice. The petitioner argues that the Mexican authorities delayed the administrative and judicial procedures over 35 years, from 1974, when the administrative review procedure was begun, to October 2005, when the last order was issued by the Supreme Court ordering payment of the respective compensation. The petitioner further adduces that the Supreme Court's decision gave retroactive application to a constitutional amendment, in violation of the right to property and the principles of *res judicata* and the freedom from *ex post facto* laws. In addition, as the result of said retroactive interpretation, the amount of the compensation paid the petitioner would have been significantly less than the property's real value. He also alleges that he was unjustly deprived of liberty for seven months without having committed any offense whatsoever, and in view of the defamatory statements by the State, his rights to judicial protection and to honor and dignity were violated.

42. With respect to the argument put forward by the State, the IACHR reiterates what is established in its case-law affirming that it is not competent to review the judgments handed down by domestic courts acting within the scope of their authority and applying due process and judicial guarantees. The Commission cannot act as a court of appeals to review the alleged errors of law or fact that may have been made by the domestic courts. Nonetheless, within the bounds of its mandate to guarantee the observance of the rights enshrined in the American Convention, the Commission is competent to find a petition admissible and to rule on the merits when it refers to a domestic court judgment handed down in violation of due process or in violation of any other right guaranteed by the American Convention.⁴

43. According to this doctrine, the Commission observes that on admitting this petition it does not seek to supplant the jurisdiction of the domestic judicial authorities to examine errors of fact and law that may have been made by domestic courts. The Commission will only determine in the merits phase whether the decisions made and acts carried out by the Mexican courts and authorities were handed down within the bounds of due process guarantees and in violation of the rights protected by the American Convention.⁵ In addition, the Commission will analyze whether the State complied with the duty to guarantee judicial protection for the alleged victim in relation to compliance with judgments which, according to the petitioner, were favorable to him.

44. Based on the foregoing considerations, the IACHR concludes that the facts alleged, if proven, tend to establish possible violations of the rights guaranteed at Articles 7, 8, 11, 21, and 25 of the American Convention, in conjunction with Article 1(1) of the same instrument, to the detriment of the alleged victim.

⁴ See IACHR, Report No. 18/15, Petitions 929-04, 1082-07 and 1187-07. Admissibility. *José Antonio Arrona Salazar and Family, Luz Claudia Irozaqui Félix and Joel Gutiérrez Ezquivel*, Mexico, March 24, 2015, para. 48; Report No. 42/08, Petition 1271-04, Admissibility, *Karen Atala and daughters*, Chile, July 23, 2008, para. 59.

⁵ See IACHR, Report No. 18/15, Petitions 929-04, 1082-07 and 1187-07. Admissibility. *José Antonio Arrona Salazar and Family, Luz Claudia Irozaqui Félix and Joel Gutiérrez Ezquivel*, Mexico, March 24, 2015, para. 49; Report No. 42/08, Petition 1271-04, Admissibility, *Karen Atala and daughters*, Chile, July 23, 2008, para. 60.

V. CONCLUSIONS

45. Based on the foregoing considerations of fact and law, the Inter-American Commission concludes that this petition meets the admissibility requirements set out at Articles 46 and 47 of the American Convention and, without prejudging on the merits,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To find this petition admissible in relation to Articles 7, 8, 11, 21, and 25 of the American Convention, in connection with the obligations established at Article 1(1) of the same instrument;
2. To notify the parties of this decision;
3. To proceed with the analysis on the merits; and
4. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 29th day of the month of July, 2016. (Signed): James L. Cavallaro, President; Francisco José Eguiguren, First Vice President; Margarete May Macaulay, Second Vice President; Paulo Vannuchi, and Esmeralda E. Arosemena Bernal de Troitiño, Commissioners.