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REPORT No. 62/17
PETITION 731-11
REPORT ON ADMISSIBILITY

ORELLANA VÁSQUEZ FAMILY
GUATEMALA

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Guatemala. May 25, 2017.



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I. SUMMARY

1. On May 24, 2011, the Inter-American Commission on Human Rights (hereinafter, “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition lodged by Elizabeth Vásquez Pérez de Orellana and Erick Alonso Orellana Ortega (hereinafter, “the petitioners”) against Guatemala (hereinafter, “Guatemala” or “the State”). The petition was presented on their behalf and on behalf of their children K.A. and E.E. (hereinafter, “the alleged victims” or “the Orellana Vásquez family”).

2. The petitioners claim that the State arbitrarily interfered in their role as parents by forcing them to transfer their children from a distance-learning system to a day school regime, in violation of their religious convictions and of their right to choose the type of education given to their children. In response, the State contends that the petition is manifestly groundless and that the Commission is not competent to review the rulings of its domestic courts.

3. Without prejudging the merits of the case, after analyzing the positions of the parties and in compliance with the requirements set forth in Articles 31 to 34 of the IACHR’s Rules of Procedure (hereinafter, “the Rules of Procedure”) and Articles 46 and 47 of the American Convention on Human Rights (hereinafter, “the American Convention” or “the Convention”), the Commission decides to declare the petition admissible in order to examine the claims related to the alleged violation of the rights enshrined in Articles 11 (Right to Privacy), 12 (Freedom of Conscience and Religion), 17 (Rights of the Family), 19 (Rights of the Child), and 26 (Progressive Development) of the American Convention, in light of the obligations arising from Article 1.1 thereof, as well as in Article 13 (Right to Education) of the Additional Protocol to the Convention in the area of Economic, Social, and Cultural Rights (hereinafter, “the Protocol of San Salvador”). In addition, the Commission resolves to give notice of this decision to the parties, 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 IACHR

4. The IACHR received the petition on May 24, 2011, and forwarded a copy of the relevant parts to the State on August 14, 2013, giving it a deadline of two months to present its comments, in keeping with Article 30.3 of the Rules of Procedure. The State’s reply was received on November 14, 2013, and it was forwarded to the petitioners on March 4, 2015.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioners

5. The petition addresses the State’s alleged arbitrary interference in the right of Elizabeth Vásquez and Erick Alonso Orellana to choose their children’s education. The petitioners state that given the situation of violence, precarity, and low educational quality found in Guatemala’s public education system, they chose to remove K.A. from the public school where he was studying and to enroll him, along with his younger brother E.E., in the distance-learning system of Colegio Hebrón. They indicate that that system had been approved by the Ministry of Education and that it was in keeping with their religious and personal convictions.

6. According to the petitioners, on May 2, 2008, the paternal grandparents of the minors K.A. and E.E.—who, at the time, were aged 8 and 3, respectively¹—filed a criminal complaint against Mrs. Elizabeth Vásquez for the physical mistreatment, lack of care, and neglect of the children; in the complaint, they also sought protective measures. According to the documents presented, the complainants alleged that the defendant had not enrolled the children in school and was making them work the entire day.

7. On May 22, 2008, the Third Court for Children and Adolescents ordered the office of the Attorney for Children and Adolescents to corroborate the alleged facts. The Court received a report dated July 18, 2008, issued by the Social Worker of the office of the Attorney General of the Nation (PGN), in which she stated that after visiting the family home and interviewing Mrs. Vásquez and the minors K.A. and E.E., who were studying at Colegio Hebrón, “she was able to see that [they] show[ed] no sign of physical mistreatment and so (...) removal from the home was not warranted (...); the problem is between the adults.”

8. On September 5, 2008, the children’s mother and father appeared at a hearing before the Third Court. The petitioners report that on that occasion, they stated that the children were suffering no mistreatment of any kind, that they were studying at Colegio Hebrón under the home school regime, and that the entire situation was due to family problems with the grandparents. At that same hearing, the judge “surrendered” the children to their parents under a “precautionary measure of temporary custody.” On that same date, the judge also requested that the head of the Criminalistics Laboratory conduct a forensic medical examination of the children to determine whether they had been physically mistreated. On September 10, 2008, the expert opinions were issued, which concluded that they showed no clinical signs of physical mistreatment and that, at the time of the examination, they were in good health.

9. On December 15, 2008, the PGN issued psychological reports to determine the emotional state of K.A. and E.E. With regard to E.E., it recommended “a sharp reprimand for the mother (...) regarding her hitting of the children” and that both she and their father attend the School for Parents of the National Commission against Child Mistreatment and Sexual Abuse (hereinafter, “the School for Parents”). With regard to K.A., it recommended that “if it can be established who has mistreated [K.A.] (...) and who is bringing emotional pressure to bear on the child, said person should be removed from the home in order to keep him or her from causing additional harm to [the children]”; it further recommended that the child attend psychological guidance services for a prudent length of time, and that his narrative be taken into account at the hearing to establish or corroborate the actual situation within the family.

10. On the same date, two psychological reports for the determination of family resources on Mrs. Elizabeth Vásquez and Mrs. Sotera Ortega, the children’s paternal grandmother, were issued, which recommended that the children remain with their parents but that it was vital for their mother to attend the School for Parents in order for her to improve the way she treated her sons.

11. On December 22, 2008, the Third Court held a hearing to examine the facts. It was attended by the Orellana Vásquez family, the children’s paternal grandparents, a social worker attached to the Court, and a representative of the PGN. The Court ratified the precautionary measure whereby the children were placed in the temporary custody of their parents and requested a series of formalities, including the parents’ attendance at the School for Parents and psychological therapy for the children.

12. On March 23, 2009, the Court received the psychological evaluation reports on K.A. and E.E., which recommended that they undergo psychological monitoring and that they participate in sports or other recreational activities. On March 24, 2009, the Court received the pedagogical reports prepared by the educational expert of the Court of Appeal for Children and Adolescents, which recommended that K.A. and E.E. should continue their schooling in Colegio Hebrón’s distance-learning program and should practice a sport of their choice.

¹ The documents presented during the processing of the petition indicate that, at the time, E.E. was 5 years of age.

13. On April 21, 2009, the PGN presented the Court with the Psychological Report for the Determination of Family Resources on Erick Alonso Orellana, which recommended that he be considered an “ideal family resource” for the Orellana Vásquez children; it also found that the distance-learning regime was productive. On May 5, 2009, Mrs. Elizabeth Vásquez presented the report on the evidence collected for the definitive hearing, which was ruled inadmissible on May 6, 2009, on the grounds that it was not submitted five days in advance of the hearing as required by the Law on the Protection of Children and Adolescents.

14. On May 7, 2009, the definitive hearing was held before the Third Court for Children and Adolescents and judgment was issued. The Court’s ruling found that the human rights of K.A. and E.E. “to the integrity, enjoyment, and exercise of their rights to respect, to dignity, to the family, to the stability of the family, and to education” had been partially violated. The judge ordered that the children be handed over to the “definitive custody” of their parents; he also admonished the parents and ordered them to attend the School for Parents. Additionally, he ordered social, psychological, and pedagogical supervisory measures with respect to the children, and that, for the next school year, that they be enrolled in a place of learning with a daily plan regime. In that regard, the judge said that distance learning did not enable children to develop a “complete personality or to learn about the country’s current situation.”

15. On June 15, 2009, the appeal lodged by Mrs. Elizabeth Vásquez was admitted for processing and the proceedings were referred to the Court of Appeal for Children and Adolescents. Mrs. Vásquez contended that the judge had violated her human rights by ordering her to find a place of learning with a daily plan regime for the children. She stated that the children “used to study at a public school but they had chosen to remove them on account of the bad influences, abuses, and vices found there and they were being given education in a system of Christian home schooling, which was more in line with their religious convictions.” Moreover, she said she believed the order that they attend the School for Parents constituted a violation of their human rights.

16. The appeal hearing, held on November 11, 2009, found the appeal groundless and upheld the judgment of May 7, 2009. The appeals chamber ruled that the judge “had upheld the human rights of the protected children and also those of their parents, in that he applied the relevant special law, constitutional rights, and the provisions applicable to the specific case, given that the measures ordered are in pursuit of the psychological, biological, and social development of the protected children, which indicates that no rights have been violated.”

17. On December 11, 2009, Mrs. Elizabeth Vásquez filed for *amparo* constitutional relief and the proceedings were referred to the Amparo and Pretrial Chamber of the Supreme Court of Justice. On December 30, 2009, the Amparo Chamber issued an ex officio order for provisional relief on the grounds that the Court of Appeal for Children and Adolescents had not forwarded it the background to the *amparo* or a grounded report. On May 17, 2010, the Amparo Chamber dismissed the suit on the grounds that it was manifestly out of order, finding that “to rule against the interests of the applicant does not imply a violation of such legal principles as justice, respect for human rights, constitutional supremacy, [and] the protection of the family,” and imposing a fine on Mrs. Vásquez’s attorney.

18. Mrs. Vásquez appealed and, on September 20, 2010, the Constitutional Court upheld the judgment against which she had filed her appeal, finding that “the instruction to find a new place of learning with a daily plan regime for her children did not violate the appellant’s right to choose their education, since although she was ordered to change the distance learning regime in which they were enrolled for a day school, that was because as had been established in the proceedings, that system is only justified when there is no accessibility, by reason of distance, to a center of learning, impeding the minors’ enjoyment of their right to education.” The Constitutional Court added that the parents could choose a center of learning with a daily plan that was in accordance with their ethical, moral, and religious principles and values and that was best adapted to their beliefs, and so there was no violation of the right of freedom of religion, given that the order against which the appeal was brought was not based on religious values but on the best interest of the children. Notification of that judgment was served on Mrs. Vásquez’s attorney on November 24, 2010.

19. Based on the foregoing, the petitioners claim that the State violated, with respect to the alleged victims, the rights enshrined in Articles 1.1, 11, 12, 17, and 19 of the American Convention, together with Article 13 of the Protocol of San Salvador.

B. Position of the State

20. The State maintains that the petition is manifestly groundless, that the Commission is not a fourth instance for reviewing the judgments of its domestic courts, and that the contents of the petition and case file submitted by the petitioners leads to the conclusion that there was no violation of any human rights protected by the American Convention.

21. It contends that the judge's decision to order the parents to enroll their children in a day school and for them to attend the School for Parents does not constitute a violation of the rights to privacy or to freedom of conscience and religion, or of the rights of the family, the rights of the child, or the right to education. Guatemala adds that the case file shows that at no time was the Orellana Vásquez family submitted to excessive scrutiny by the authorities and that the judicial proceedings were in accordance with the regulatory framework established for dealing with matters involving children and adolescents and in keeping with the children's best interest.

22. In conclusion, the State requests that since the Commission is not a fourth instance and the petition is manifestly groundless, the IACHR rule it inadmissible.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

A. Competence

23. The petitioners are entitled, in principle, under Article 23 of the Rules of Procedure and Article 44 of the American Convention, to present petitions to the Commission. The petition names, as the alleged victims, individual persons with respect to whom the State of Guatemala had undertaken to respect and ensure the rights enshrined in the American Convention on Human Rights and its Additional Protocol in the area of Economic, Social, and Cultural Rights (Protocol of San Salvador). As regards the State, the Commission notes that Guatemala has been a state party to the aforementioned treaties since May 25, 1978, and May 5, 2000, respectively, the dates on which it deposited its instruments of ratification. The Commission therefore has competence *ratione personae* to examine the petition. In addition, the Commission has competence *ratione loci* to examine the petition, in that it alleges violations taking place within the territory of Guatemala.

24. The Commission has competence *ratione temporis* since the obligation of respecting and ensuring the rights protected by the Convention and by the Protocol of San Salvador was already in force for the State on the date on which the incidents described in the petition allegedly occurred. Finally, the Commission has competence *ratione materiae* regarding the alleged violations of human rights protected by the aforesaid treaties.

B. Admissibility requirements

1. Exhaustion of domestic remedies

25. Article 31.1 of the Rules of Procedure and Article 46.1(a) of the American Convention require the prior exhaustion of the resources available in domestic jurisdiction in accordance with generally recognized principles of international law as a prior condition for the admission of claims presented in a petition. This requirement is intended to facilitate the domestic authorities' examination of the alleged violation of a protected right and, if appropriate, to resolve the situation before it is brought before an international venue.

26. The petitioners contend that domestic proceedings in this case were exhausted when the Constitutional Court issued its judgment of September 20, 2010, upholding the decision of the Supreme Court of Justice's Amparo and Pretrial Chamber of May 17, 2010. For its part, the State offered no contentions regarding any failure to exhaust domestic remedies.

27. The Commission notes that the petitioners pursued the regular and special remedies that were available and that the State has not indicated any additional remedies that the petitioners might have been able to file. Consequently, the Commission concludes that in the case at hand, the remedies offered by domestic jurisdiction have been pursued and exhausted in compliance with Article 46.1(a) of the American Convention and 31.1 of the Rules of Procedure.

2. Timeliness of the petition

28. Article 46.1(b) of the American Convention and Article 32.1 of the Rules of Procedure require that for a petition to be admitted by the Commission, it must be lodged within a period of six months from the date on which the alleged victim of a rights violation was notified of the final judgment. In the case at hand, notice of the Constitutional Court's decision of September 20, 2010, was served on November 24, 2010, and the petition before the IACHR was lodged on May 24, 2011. The Commission therefore concludes that the petition meets the requirement set in Articles 46.1(b) of the Convention and 32.1 of the Rules of Procedure.

3. Duplication and international *res judicata*

29. Nothing in the case file indicates that the substance of the petition is pending in any other international settlement proceeding or that it is substantially the same as any other petition already examined by this Commission or another international body. Consequently, the grounds for inadmissibility established in Articles 46.1.c and 47.d of the Convention and Articles 33.1(a) and 33.1(b) of the Rules of Procedure do not apply.

4. Colorable claim

30. For the purposes of admissibility, the Commission must decide whether the alleged facts tend to establish a rights violation, as stipulated in Article 47.b of the American Convention and Article 34.a of the Rules of Procedure, or whether the petition is "manifestly groundless" or "obviously out of order," as described in Articles 47.c and 34.b of those two instruments. The standard of appreciation used to analyze admissibility differs from that used in examining the merits of a petition, given that the Commission conducts only a prima facie review to determine whether the petitioners have established an apparent or possible violation of a right guaranteed by the American Convention and the Protocol of San Salvador. This is a summary analysis that in no way implies a preliminary judgment or opinion on the merits of the matter.

31. In addition, the corresponding legal instruments do not require the petitioners to identify the specific rights they believe were violated by the State in a matter placed before the Commission, although the petitioners may do so. Instead, it falls to the Commission, based on the precedents set by the system, to determine in its admissibility reports what provisions of the relevant inter-American instruments are applicable, the violation of which could be established if the alleged facts are proven by means of adequate evidence.

32. The petitioners maintain that the decision of the Third Court for Children and Adolescents ordering the parents of the Orellana Vásquez family to find a school with a daily plan regime and to attend the School for Parents constituted a violation of the right to privacy, to freedom of conscience and religion, to the protection of the family, to education, and the rights of the child with respect to the Orellana Vásquez family. In turn, the State contends that the alleged facts do not tend to establish violations of the Orellana Vásquez family's human rights and that the judicial proceedings were in compliance with the regulatory framework established for dealing with matters involving children and adolescents and were conducted in accordance with the children's best interest.

33. The Commission notes that the petition raises issues related to the rights of K.A. and E.E. to education and to the associated guarantees, as well as to the rights of their parents under the terms of Article 13.4 of the Protocol of San Salvador, which provides that “in conformity with the domestic legislation of the States Parties, parents should have the right to select the type of education to be given to their children, provided that it conforms to the principles set forth above,” and other associated guarantees. Furthermore, it raises questions regarding the obligations and role of the State in education, taking into account the provisions of Article 13.2 of the Protocol, which indicates, *inter alia*, that “education should be directed towards the full development of the human personality and [...] that education ought to enable everyone to participate effectively in a democratic and pluralistic society.” Accordingly, the Commission believes the issues raised warrant study at the merits stage and are therefore not manifestly groundless. In light of the elements of fact and law presented by the parties and the nature of the matter placed before it, the IACHR decides that the instant petition is admissible as regards Articles 11, 12, 17, 19, and 26 of the American Convention, in light of the obligations arising from Article 1.1 thereof, and as regards Article 13 of the Protocol of San Salvador.

V. CONCLUSIONS

34. Based on the foregoing legal and factual considerations, the Inter-American Commission concludes that the instant petition satisfies the admissibility requirements set forth in Articles 31 to 34 of the Rules of Procedure and Articles 46 and 47 of the American Convention and, without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the instant petition admissible with respect to Articles 11, 12, 17, 19, and 26 of the American Convention on Human Rights, in light of the obligations arising from Article 1.1 thereof, and Article 13 of its Additional Protocol in the area of Economic, Social, and Cultural Rights, the Protocol of San Salvador;
2. To notify the parties of this decision;
3. To continue with its analysis of the merits of the complaint; and,
4. To publish this decision and to 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 in the city of Buenos Aires, Argentina, on the 25 day of the month of May, 2017. (Signed): Francisco José Eguiguren, President; Margarete May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, James L. Cavallaro, and Luis Ernesto Vargas Silva, Commissioners.