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REPORT No. 63/16
PETITION 860-05
ADMISSIBILITY REPORT

MIGUEL ÁNGEL AGUIRRE MAGAÑA
EL SALVADOR

Approved by the Commission at its session No. 2070 held on December 6, 2016.
159th Regular Period of Sessions.

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I. SUMMARY

4. On July 28, 2005, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission," "the Commission," or "the IACHR") received a petition initially lodged by the Human Rights Institute of the "José Simeón Cañas" Central American University (hereinafter also "the petitioners") on behalf of Mr. Miguel Ángel Aguirre Magaña¹ (hereinafter "the petitioner" or "the alleged victim") against the Salvador State (hereinafter "El Salvador" or "the State"). Mr. Aguirre Magaña argues that the State bears international responsibility for the alleged lack of diligent investigation and criminal prosecution of those responsible for an event in which he lost a leg, lost his hearing in his right ear, and suffered other serious injuries. Consequently, he argues that the State bears international responsibility for violation, to his detriment, of rights recognized at Articles 8 and 25 of the American Convention on Human Rights (hereinafter the "American Convention" or "Convention").

5. Mr. Aguirre Magaña maintains that on November 13, 1993 he was traveling in a vehicle in which the driver was illegally carrying a fragmentation grenade, which exploded under the petitioner's seat, causing him grave and irreversible physical harm. Mr. Aguirre Magaña alleges that the investigation by the Civilian National Police and successive judges handling the proceedings was negligent. Moreover, during the criminal proceedings, which dragged on for more than 11 years, several members of the Judiciary had allegedly committed acts of corruption and irregularities for the purpose of delaying judgment. As of the date this report was drafted, the State had still not presented its observations.

6. Without prejudging the merits of the complaint, after analyzing the position of the petitioner and pursuant to the requirements set forth in Articles 46 and 47 of the American Convention on Human Rights, the Commission decides to declare the petition admissible for the purpose of examining the argument relating to the alleged violation of rights established in Article 8 (Right to a Fair Trial) and Article 25 (Right to Judicial Protection) of the American Convention on Human Rights, in conjunction with Article 1.1 of said Convention. The Commission has further decided to notify the parties of this decision, make it public, and include it in its annual report to the General Assembly of the Organization of American States.

II. PROCEEDINGS BEFORE THE IACHR

7. The IACHR received the petition on July 28, 2005 and requested further information from the petitioner on June 14, 2010. On February 4, 2013, the IACHR transmitted the petition to the State, granting it two months to submit its observations, in accordance with Article 30.3 of its Rules of Procedure in force at that time. On May 15, 2013, the State requested an extension, which was granted on June 17, 2013. Subsequently, on August 18, 2004, the Commission reiterated its request to the State for information was repeated. No reply has so far been received.

8. The petitioner transmitted additional information to the IACHR on the following dates: June 17, 2013; November 24, 2014; July 3, 2015; and January 26, 2016. Those communications were duly forwarded to the State.

¹ Although the "José Simeón Cañas" Central American University initially acted as the petitioner, in recent years Mr. Miguel Ángel Aguirre Magaña has represented himself as petitioner and alleged victim.

III. POSITION OF THE PARTIES

A. Position of the petitioner

9. The petitioner, who was a judicial officer at the time of the facts of the case, states that on November 13, 1993 he was on his way to a judicial proceeding together with another official and the Justice of the Peace of Villa Apaneca, the owner of the vehicle in which they were traveling. At some point on the way, on the road between Ahuachapán and Sonsonate, a grenade suddenly exploded inside the vehicle. According to the petitioner, at that point the driver got out of the vehicle with a caliber 12 shotgun in his hands, shouting that they had been attacked, while the other passenger with them ran off to tell the police what had happened.

10. The petitioner states that at that moment none of those accompanying him had helped him, even though it was he who had received the blast from the detonation. He was helped only by third parties who happened to be present at the place where it happened. They took him to the "Francisco Menéndez" Hospital in Ahuachapán. From there, he was transferred to the Social Security Hospital in Santa Ana. The petitioner reports that, as a result of the explosion, they amputated his right leg above the knee; he lost all hearing definitively in his right ear; and suffered multiple injuries to other parts of his body.

11. The petitioner claims that, according to expert reports by the Civilian National Police (hereinafter "PNC"), the explosion occurred inside the vehicle. However, according to the petitioner, the driver had invented the story that the grenade had been thrown from outside the vehicle and exploded when it landed inside it. Accordingly, the petitioner alleges that the auxiliary organs of the justice system, such as the Civilian National Police, conducted a deficient investigation into what had happened, in that they had not protected the scene of the crime, had not properly secured the evidence, and had not practiced due diligence in performing scientific tests to determine whether the explosive device had been inside the vehicle or thrown into it from outside. He also alleges corruption on the part of two forensic scientists involved in the case and unwarranted delay in the whole proceedings thereafter.

12. He points out that the criminal proceedings began on November 14, 1993, when the Justice of the Peace of Villa Concepción de Ataco conducted the initial inquiries, and that they were then referred to the Criminal Court of Ahuachapán on November 15, 1993. On November 13, 1996, the Criminal Court Judge in Ahuachapán recused himself, because the alleged victim was working as an officer in that Court. The petitioner states that on April 20, 1998, the investigation was transferred to the Court of First Instance (*Juzgado de Instrucción*) in Ahuachapán, which handled the proceedings for the next several years. The petitioner complains that during the ensuing years the judges in charge of the investigations changed several times, in some cases recusing themselves from hearing the case; and that in the course of the proceedings there were several irregularities, including failure to move the case forward. He further alleges that some magistrates and higher court judges exerted pressure on the various judges in charge of the investigations with a view to protecting the accused, given that he was the Justice of the Peace in Villa Apaneca.

13. Later on, the proceedings were referred to the Court of the Third Western Section (*Cámara de la Tercera Sección de Occidente*), which appointed the Second Justice of the Peace of Ahuachapán as substitute judge; however, he recused himself too. On June 18, 2002, this controversy then shifted to the Supreme Court of Justice, which, after 10 months, appointed the Judge of the First Instance Court in Atiquizaya to continue hearing the case.

14. Mr. Aguirre Magaña states that on May 19, 2004, the Judge of the First Instance Court in Atiquizaya resolved to provisionally dismiss all charges against the only accused in the case, a decision that the petitioner attributes to an allegedly malfunctioning justice system.

15. The petitioner points out that the prosecutor responsible for the investigation appealed the provisional dismissal of charges decision before the Court of the Third Western Section, which upheld the appealed decision in a judgment handed down on July 20, 2004. Mr. Aguirre Magaña indicates that that Court confirmed the provisional dismissal because it considered that there were not enough grounds to establish

the responsibility of the alleged owner of the grenade, due to the fact that a proper investigation had not been carried out. Accordingly, the petitioner bases his claim before the IACHR on the fact that the Court of the Third Western Section itself established in its resolution that:

From the inspection and experts' report it is evident that the proper methodology was not even remotely followed, while, in addition, the expert appraisals are not conclusive in their assertions and leave significant room for doubt. They cannot therefore be used to determine what happened and dispel the doubts raised by the opposing versions of the facts [on the one hand, the petitioner claimed that the grenade was inside the vehicle already before it exploded, while, on the other, the defense of the accused maintained that it was tossed in from the outside].

[...]

Given the time that has elapsed and the disappearance of the vehicle, it is becoming difficult, almost impossible, to conduct other expert appraisals to dispel the doubt that exists, doubts that the experts themselves raised by acknowledging the need for further investigations. As a consequence of the insufficient investigation, no sufficient determination was reached of the *corpus delicti* or of the part played by the accused [...]²

16. In short, Mr. Aguirre Magaña maintains that, due to deficiencies in the investigations carried out by auxiliary services of the police; alleged irregularities on the part of the forensic scientists taking part in the investigations; various defects of due process during the criminal proceedings in which he participated as the victim; and allegedly irregular actions by members of the Judiciary, his alleged aggressor had gone unpunished, which meant that he had been denied access to justice. He mentions, moreover, that the proceedings had gone on for more than 11 years, mainly due, he alleges, to delaying tactics by the judicial authorities involved.

17. Based on the foregoing, the petitioner argues that the State violated, to his detriment, the rights established in Articles 8 and 25 of the American Convention on Human Rights, in conjunction with Article 1.1 said Convention.

B. Position of the State

18. As of the date this report was adopted, the State had not provided its observations with respect to the present petition.

IV. ANALYSIS OF COMPETENCY AND ADMISSIBILITY

A. Competence

19. The petitioner is entitled under Article 44 of the American Convention to lodge petitions with the Commission. The petition alleges the violation of rights enshrined in the American Convention on Human Rights to the detriment of an individual in respect of whom the Salvadoran State undertook to respect and ensure those rights from the date on which it deposited its instrument of ratification of the aforementioned treaty, June 23, 1978. Based on the foregoing and taking into account that the alleged violations are said to have occurred within the territory of a state party to this treaty after it deposited its instrument of ratification, the IACHR concludes that it is competent *ratione personae*, *ratione loci*, *ratione temporis* and *ratione materiae* to examine the petition.

² Original petition received on July 28, 2005, attached: Judgment of the Court of the Third Western Section in Ahuachapán of July 20, 2004.

20. The above shall not preclude the IACHR, during the merits stage in the processing of this petition when it examines possible violations of the American Convention, from taking into consideration other instruments that pertain to the body of law (*corpus juris*) relating to the rights of persons with disabilities when applicable.

B. Admissibility Requirements

1. Exhaustion of domestic remedies

21. Article 46(1)(a) of the American Convention provides that admission of petitions lodged with the Inter-American Commission alleging violation of the Convention shall be subject to the requirement that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law. This rule is designed to allow national authorities to examine alleged violations of protected rights and, as appropriate, to resolve them before they are taken up in an international proceeding.

22. With regard to the exhaustion of domestic remedies, the petitioner argues that in the instant case the objection contemplated in Article 46(2)(c) of the American Convention is applicable, given that the proceedings as a whole have gone on for more than 11 years. According to the latest information provided by the petitioner regarding the criminal proceedings, confirmation of definitive dismissal is still pending.

23. In the present petition, the Inter-American Commission notes that the facts occurred on November 13, 1993 and that the criminal proceedings, specifically in respect of its investigative phase, lasted more than 11 years. On July 20, 2004, the Court of the Third Western Section upheld the provisional dismissal issued on May 19, 2004, in the court of first instance. Here, the Commission observes that, in accordance with Salvadoran legislation (Articles 31 and 350-352 of the Code of Criminal Procedure) the criminal action prescribes if one year elapses following issuance of the provisional dismissal without the prosecutor involved requesting a reopening of the investigations. The petitioner has reiterated that, following the upholding of the provisional dismissal, no progress has been made with the investigation of his case.

24. Accordingly, the Commission notes that, according to the information in the file, Mr. Aguirre Magaña appears to have pursued all the judicial actions needed to move a criminal investigation forward that was undertaken on account of the deeds of which he is the alleged victim, and that it would be unreasonable on the part of this Commission to require him to exhaust additional remedies. In addition, it transpires from the position of the parties that the criminal proceedings conducted on account of the facts alleged by the petitioner have concluded in accordance with applicable domestic law. Additionally, the Salvadoran State did not provide during the processing of the petition any elements that would enable the IACHR to reach a different conviction, which leads the Commission to conclude that the present petition meets the requirement of exhaustion of domestic remedies under Article 46(1)(a) of the American Convention on Human Rights.

2. Timeliness of the petition

25. Article 46(1)(b) of the American Convention provides that for a petition to be admissible, it must be presented within six months of the date on which the party alleging violation of rights was notified of the final judgment. In the claim under review, the Inter-American Commission has considered that domestic judicial proceedings reached a definitive end once the one-year period had elapsed since the decision handed down by the Court of the Third Western Section on July 20, 2004, rendering the court of first instance's provisional dismissal resolution enforceable. In light of that consideration, and the fact that the petition before the IACHR was received on July 28, 2005, the Commission considers that the petition was lodged within a reasonable time and that the admissibility requirement regarding the timeliness of its presentation must be deemed met.

3. Duplication and international *res judicata*

26. The case records do not show that the subject of the petition is pending other international settlement procedures, or that it replicates a petition already examined by this or another international organization. Therefore, the requirements set forth in Articles 46(1)(c) and 47(d) of the Convention are considered as having been met.

4. Colorable claim (characterization of the facts alleged)

27. For the purposes of admissibility, the IACHR must decide, pursuant to Article 47(b) of the American Convention, whether the facts alleged, if proven, could characterize a violation of rights, or whether, pursuant to paragraph (c) of the same article, the petition is "manifestly groundless" or "obviously out of order." The criterion for analyzing admissibility differs from that used to analyze the merits of the petition, given that the Commission only conducts a *prima facie* analysis to determine whether the petitioners establish an apparent or possible violation of a right guaranteed by the American Convention. This is a matter of a cursory analysis that does not amount to prejudging or issuing a preliminary opinion on the merits of the matter.

28. Furthermore, neither the American Convention nor the Rules of Procedure of the IACHR require that the petition identify the specific rights allegedly violated by the State in a matter submitted to the Commission, though the petitioners may do so. It is up to the Commission, based on the case-law of the system, to determine in its admissibility reports which provision of the relevant inter-American instruments is applicable or could be established as having been violated, if the facts alleged are sufficiently proven.

29. The petitioner complains that he has been the victim of a consistent denial of justice given that the acts that caused him permanent physical disability have gone unpunished. The petitioner stresses that the criminal proceedings as a whole have exceeded any reasonable period of time; that the investigation phase lasted more than 11 years; and that he considers it unjustifiable that after all that time domestic courts justify not prosecuting the person responsible for the facts on the grounds that the initial investigations were conducted inappropriately or negligently. The petitioner complains that delaying tactics were used by the judicial authorities and that judges continuously recused themselves. He points out that, just at the first instance level, nine judges were involved. In addition, he alleges that there were acts of corruption and collusion by different judges and justices of the peace in the Judiciary aimed at protecting the person allegedly responsible for what happened.

30. In light of the arguments of fact and law submitted by the petitioner and the nature of the matter before it, the IACHR finds that, if proven, the alleged facts could constitute possible violations of rights protected in Articles 8 and 25 of the American Convention, in conjunction with Article 1(1) thereof, to the detriment of Mr. Miguel Ángel Aguirre Magaña.

V. CONCLUSIONS

31. Based on the foregoing considerations of fact and law, and without prejudging the merits of the matter, the Commission concludes that the petition meets the requirements for admissibility set forth in Articles 46 and 47 of the American Convention.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the instant petition admissible in relation to Articles 8 and 25 of the American Convention, in conjunction with the obligation contained in Article 1.1 thereof;
2. To notify the parties of this decision;

3. To proceed with its examination of the merits of the case; and
4. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Panama, on the 6th day of the month of December, 2016. (Signed): James L. Cavallaro, President; Francisco José Eguiguren, First Vice President; Margarete May Macaulay, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, Esmeralda E. Arosemena Bernal de Troitiño and Enrique Gil Botero, Commissioners.