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REPORT No. 65/17
PETITION 606-08
REPORT ON ADMISSIBILITY

E.J.M. AND FAMILY
HONDURAS

Approved by the Commission at its session No. 2085 held on May 25, 2017
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Honduras. May 25, 2017.



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I. SUMMARY

1. On May 15, 2008, the Inter-American Commission on Human Rights (hereinafter, “the Inter-American Commission,” “the Commission” or “the IACHR”) received a petition lodged by Geovanny Valle Molina (hereinafter, “the petitioner”) against Honduras (hereinafter, “Honduras” or “the State”). The petition was filed on behalf of E.J.M. (hereinafter, “the alleged victim”).

2. The petitioner claims that his brother E.J.M., who was 14 years old at the time of the events, died of hypovolemic shock caused by dengue hemorrhagic fever, contracted during a combat training exercise conducted by the Liceo Militar del Norte, an educational institution under the Armed Forces of Honduras. He alleges that despite having advised the senior officers about his health status, he received no medical treatment, but was instead forced to continue the exercise and was even subjected to corporal punishment over the course of the night, until he lost consciousness the following day during a hike and passed away shortly thereafter. He contends that too much time had elapsed before the officers responsible for the death were prosecuted in criminal proceedings. In response, the State alleges that it has prosecuted the case and has followed up on it in order to ensure due process of law and punish those responsible; the alleged victims have not exhausted the remedy of a civil claim to request fair compensation; the facts alleged in the case do not tend to establish a violation of human rights enshrined in the American Convention on Human Rights (hereinafter, “the American Convention” or “the Convention”); and that this is a dispute between private individuals.

3. Without prejudice to the merits of the petition, after examining the positions of the parties and in keeping with the requirements under Articles 46 and 47 of the American Convention, the Commission decided to find the petition admissible for purposes of examining the claims relating to the alleged violation of the rights enshrined in Article 4 (right to life), Article 5 (right to humane treatment), Article 8 (right to a fair trial), Article 19 (rights of the child) and Article 25 (right to judicial protection) of the Convention, in light of the provisions set forth under Article 1.1 (obligation to respect rights) of the same instrument. The Commission decides to notify the parties of this decision and to publish it in the Annual Report to the General Assembly of the Organization of American States.

II. PROCEEDINGS BEFORE THE IACHR

4. The IACHR received the petition on May 15, 2008, and forwarded a copy of the relevant portions to the State on January 14, 2013, granting it a two-month period to submit its observations, in keeping with Article 30.3 of the Rules of Procedure in force at the time. On February 26, 2013, the State’s response was received and was forwarded to the petitioner on May 24, 2013.

5. The family of E.J.M submitted additional observations on June 20, 2013. In turn, the State submitted additional observations on November 6, 2013. These observations were duly forwarded to the opposing party.

III. POSITIONS OF THE PARTIES

A. Position of the petitioner

6. The petition involves the death of E.J.M., a 14-year-old boy, who allegedly died as a result of negligence and lack of supervision and protection by those in charge of the Liceo Militar del Norte, and the alleged delay in the criminal proceedings against the persons allegedly responsible for the death.

7. The petitioner argues that he and his brother, E.J.M., were students at the military preparatory school Liceo Militar del Norte, an institution that belongs to the Armed Forces of Honduras, which prepares reserve officers for the Armed Forces. He contends that at said school, "combat training" is conducted off campus. In late October 2003 his brother, 14-years-old at the time, whose life ambition was to become a doctor, was taken to the facilities of the 15th Battalion of Trujillo (approximately 8 hours from the school) to practice field maneuvers. During said time, his brother and several classmates contracted mosquito-borne dengue hemorrhagic fever. He alleges that the school did not spray nor take the necessary preventive measures and even punished the students by forcing them to get into puddles left by the rain.

8. He claims that, because there was no medical doctor available, E.J.M. advised the male nurse that he was not feeling well and the only thing the nurse prescribed to him was to rest for two days, but he was sent back to continue with daily activities. The petitioner argues that two days later E.J.M. apprised the Vice Rector of the school that "he did not want to continue the training because he didn't feel well and he wanted to call his parents." The Vice Rector did not let him do so and only allowed him to rest that afternoon, making him return to practice sessions at night.

9. The training that night involved "not getting caught by the enemy;" however, E.J.M. "let himself be caught" and consequently he and other classmates were left outside "the whole night singing under the rain and were punished with corporal exercises (...) and they were sent to sleep at 5:00 a.m." That same day, after sleeping for approximately seven hours, he was taken to do a two-hour hike, unaccompanied by any adult, and upon his return he entered into hypovolemic shock and lost consciousness.

10. The petitioner notes that E.J.M.'s classmates took him to the Hospital of Trujillo, Department of Colon, where they were told he was seriously ill and that he needed to receive treatment in San Pedro Sula, Department of Cortes. However, the officers of the school refused to transfer him and communicated to the family of E.J.M. that he just had a case of "sun poisoning." He claims that the family managed to transfer him to San Pedro Sula and upon entering said hospital, the doctor diagnosed him brain dead, with the alleged victim dying six days later from the hypovolemic shock caused by the dengue hemorrhagic fever. He alleges that the school did not help the family pay the amount of money charged by the private hospital to admit E.J.M.

11. The petitioner related that a criminal complaint was filed against the officers of the school but the judge dismissed the charges without prejudice at the request of the Prosecuting Attorney who, according to the petitioner, refused to pursue the case. After the petitioner filed an appeal against said ruling, the Court of Appeals overturned the dismissal and the Trial Court of the Judicial Section of San Pedro Sula, Department of Cortes, denied the motion to dismiss on November 2, 2006, and determined that "the record of the case proceedings show legal evidence constituting criminal offenses."

12. The petitioner alleges that more than four years had elapsed since the time the petition was lodged and the Public Prosecutor had not filed charges. In his second and last communication received on July 15, 2013, the petitioner notes that "the path that [they have followed] has been long and winding" and it matches the timeline of the criminal case proceedings submitted by the State.

B. Position of the State

13. The State claims that the military training academy Liceo Militar del Norte is a private institution that does not belong to the State, nor is it under the structure of the Armed Forces of Honduras,

inasmuch as the administration and assets thereof were transferred to the Instituto de Previsión Militar (Military Mutual Benefits Institute) so that the educational facility would be managed as an office thereof, which belongs to the contributing members, not to the State. Based on Official Letter No. 3956-2013, submitted by the State, administration of the education facility “is the direct responsibility of the Instituto de Previsión Militar; however, operationally speaking, it is backed by the Armed Forces of Honduras in order to achieve efficient functioning thereof.”

14. The documentation provided by the State shows that on October 27, 2003, a group of students of Liceo Militar del Norte, an educational institution for reserve officers of the Armed Forces, including E.J.M., were taken to the facilities of the 15th Xatruch Infantry Battalion, in the Municipality of Trujillo, Department of Colon, in order to conduct military training maneuvers.

15. In the second week of training, E.J.M. presented health problems, such as fever and muscular aches. According to the information it furnished, he requested authorization from the Vice Rector to leave, which was denied. On November 19, 2003, he fainted during a hike and was transferred to Salvador Paredes Hospital in Trujillo, Department of Colon. On November 20, 2003, because of his state of unconsciousness, he was taken by ambulance to the Military Hospital of San Pedro Sula, Department of Cortes, and from there he was sent to the Hospital del Valle of said city, where he was diagnosed with multi-organ failure as a likely side effect of dengue hemorrhagic fever. E.J.M. died on November 25, 2003, as a result of cardiac arrest from an undetermined illness, the symptoms of which appeared two weeks after he arrived in the 15th Infantry Battalion.

16. The State notes that in case No. 0501-2009-2472, which was heard before the Unified Criminal Trial Court in San Pedro Sula, on February 3, 2009, the Public Prosecutor’s Office brought charges for the crime of the negligent homicide of the alleged victim against six officers (based on the documentation provided, one Lieutenant Colonel, three Coronels and two Captains of the Armed Forces). On March 24, 2009, the arraignment hearing was held and on April 23, 2009, the case against two of the officers was dismissed with prejudice, and the case against the other four was dismissed without prejudice. The State reports that the private attorney of the victim and the Public Prosecutor appealed said ruling and on May 2, 2011, the Court of Criminal Appeals of the Judicial Section of San Pedro Sula overturned the dismissal without prejudice against two of the defendants and upheld the dismissal with prejudice.

17. It asserts that on February 7, 2012, the Public Prosecutor filed formal charges against the two defendants and on February 10, 2012, the Court issued an order to open public oral trial proceedings and transferred the case file to the Sentencing Court of San Pedro Sula. The 4th Chamber of the Sentencing Court of San Pedro Sula heard the case under the number 26/2012.

18. On June 7, 2013, the 4th Chamber acquitted one of the defendants and convicted the man who was the Vice Rector at the time to 3 years of imprisonment and an accessory punishment of special disqualification from public positions and deprivation of civilian rights for the time of the jail term. The defendant was also found civilly liable and was granted a suspended sentence and was placed on probation for five years, though the suspension of sentence execution does not extend to civil obligations arising from the crime.

19. The State further notes that that based on the judgment, “the victims have an expeditious avenue to file a civil suit or claim against the convicted individual with the appropriate courts, in order to seek appropriate compensation.” It concludes that, consequently, domestic remedies have not been exhausted in civil proceedings and, accordingly, the petition must be found inadmissible. It contends that the case has been prosecuted and closely monitored in order to ensure due process of law and those responsible were punished.

20. In conclusion, the State argues that domestic remedies have not been exhausted, the facts alleged in the petition do not tend to establish a violation of human rights, and that this is a dispute between private individuals; therefore, the petition must be found inadmissible.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

A. Competence

21. The petitioner is entitled, in principle, under Article 23 of the Rules of Procedure, to lodge petitions with the Commission. The petition names as alleged victim an individual, for whom the State of Honduras has pledged to protect and ensure the rights enshrined in the American Convention on Human Rights. As for the State, the Commission notes that it has been a party to the Convention since September 8, 1977, the date it deposited the instrument of ratification thereof. Consequently, the Commission is competent *ratione personae* to examine the petition. The Commission is also competent *ratione loci* to hear the petition, inasmuch as it alleges violations, which are claimed to have taken place within the territory of Honduras.

22. The Commission is competent *ratione temporis*, because the obligation to respect and ensure the rights protected in the American Convention was already in force on the State when the facts alleged in the petition are claimed to have occurred. Lastly, the Commission is competent *ratione materiae*, inasmuch as the petition alleges possible violations of human rights protected by the said instrument.

B. Admissibility Requirements

1. Exhaustion of Domestic Remedies

23. Article 31.1 of the Rules of Procedure requires prior exhaustion of domestic remedies, in keeping with generally recognized principles of international law in order for a petition to be admitted regarding an alleged violation. The purpose of this requirement is to allow for domestic courts to first hear any cases of alleged violations of a protected right and, when appropriate, have the opportunity to settle the matter before it is heard before an international body.

24. The petitioner claims that the proceeding against the allegedly responsible persons has been marred by unwarranted delay, stemming from the dismissal originally issued in the case, and that said proceeding has only move forward because of steps taken by the petitioner before the Inter-American human rights system. The State's argument, in turn, is that the alleged victims have not exhausted the remedy of a civil suit or claim and, consequently, the petition is inadmissible.

25. As for the State's allegation regarding the failure to exhaust the remedy of a civil suit or claim for purposes of seeking compensation based on the conviction issued in the criminal case for the death of E.J.M., the Commission recalls that because this case involves acts constituting crimes, which are prosecutable *ex officio*, a criminal proceeding is, in principle, the proper avenue to pursue in order to elucidate this type of act, try those responsible and establish the appropriate criminal sanctions. The IACHR deems it pertinent to clarify that for purposes of determining the admissibility of the claim, a civil suit or claim is not the suitable remedy and exhaustion thereof is not necessary.¹

26. Regarding the criminal proceeding, based on the information provided by the State, the case against the Vice Rector of the Liceo Militar del Norte ended in a conviction issued by the Sentencing Court of San Pedro Sula, Department of Cortes, on June 7, 2013. Based on the representations provided, another defendant was acquitted. The Commission does not have information to confirm whether any appeal against said judgment has been filed and whether peremptory rulings have been issued in regard to the two defendants whose case were dismissed without prejudice. Taking into account the available information and the length of time that has elapsed, the Commission finds that the exception set forth under Article 46.2.c of the Convention is applicable.

¹ IACHR, Report N° 18/14 (Admissibility), Petition 1625-07, Y.C.G.M. and Family Members, Colombia, April 3, 2014, para. 43.

2. Timeliness of the Petition

27. Article 46.1(b) of the Convention and Article 32.1 of the Rules of Procedure establish that in order for a petition to be admissible before the Commission, it must be lodged within six months of the date on which the alleged victim was notified of the final decision adopted by domestic courts. The petition was lodged with the IACHR on May 15, 2008 and domestic remedies were exhausted on June 7, 2013, while the petition was under examination for admissibility. Under IACHR doctrine, analysis of the requirements set forth in Article 46.1(b) of the Convention and Article 32.1 of the Rules of Procedure must be conducted in light of the situation at the time the finding is issued on the admissibility or inadmissibility of the claim.² Based on the foregoing, it must be found that the requirement has been met.

3. Duplication of proceedings and international *res judicata*

28. There is no evidence in the case file that the subject of the petition is pending in another international proceeding for settlement, nor that it is substantially the same as one previously studied by this or any other international organization. Therefore, the grounds for inadmissibility set forth in Articles 46.1(c) and 47.d of the Convention and Article 33.1(a) and 33.1(b) of the Rules of Procedure are not applicable.

4. Colorable Claim

29. For purposes of admissibility, the Commission must decide whether or not the facts in the petition could tend to establish a violation of rights, as provided under Article 47.b of the American Convention and Article 34.a of the Rules of Procedure, or whether the petition is “manifestly groundless” or is “obviously out of order,” pursuant to Article 47.c of the American Convention and Article 34.b of the Rules of Procedure. The standard for assessing admissibility is different from the one used to judge the merits of the petition, inasmuch as the Commission must make a *prima facie* evaluation to determine whether a petition includes a basis for an apparent or potential violation of a right protected by the American Convention on Human Rights. This determination is a summary examination, which does not prejudice or provide an advance ruling on the merits of the matter.

30. Additionally, the respective international instruments do not require petitioners to identify the specific rights allegedly violated by the State in matters submitted to the Commission, although they may do so. Based on the system of legal precedents, it is the duty of the Commission to determine in its admissibility reports what provision of relevant Inter-American instruments is applicable and could be concluded to have been violated, should the alleged facts be proven by means of sufficient evidence and legal argument.

31. The petitioner claims that his brother E.J.M. died as a consequence of negligent behavior of those in charge of the Liceo Militar del Norte and that his death was caused by a lack of basic measures of oversight and protection. Specifically, he contends that the senior staff of the school did not provide the medical care required by E.J.M. to treat his health problems while engaging in school activities, but he was instead forced to continue with the training exercises and he was punished; and he alleges that the criminal proceeding against the senior officers was brought after too much time had elapsed. The Commission notes in this regard that, based on the available information, the persons that were directly involved in the death of E.J.M. were not criminally sanctioned and that the only conviction was issued against the Vice Rector, who was sentenced to 3 years of prison. In turn, the State claims that it has prosecuted the case and followed up on it in order to ensure due process of law and that those responsible are punished. It contends as well that the facts alleged in the petition do not tend to establish a violation of the human rights enshrined in the Convention and that the case involves a matter of a dispute between private individuals.

² IACHR, Report No. 15/15, Petition 374-05. Members of the Trade Union of Workers of the National Federation of Coffee Growers of Colombia. Colombia. March 24, 2015, para. 41. See in conjunction, IA Court of HR, *Case of Wong Ho Wing v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 30, 2015. Series C No. 297, para. 25-28.

32. In view of the elements of fact and law introduced by the parties, the IACHR must examine during the merits stage the nature of the link between the Liceo Militar del Norte and the State, the treatment received during the training exercises, the alleged lack of timely medical care of the alleged victim, as well as the alleged delay in the criminal investigation, all in light of the special obligations in matters involving the rights of children and adolescents.

33. Therefore, based on the nature of the matter submitted for its consideration, the Commission finds that, if proved, the alleged facts could tend to establish potential violations of rights protected in Articles 4, 5 and 19 of the American Convention to the detriment of E.J.M., as well as Articles 5, 8 and 25 of the Convention to the detriment of his family members, all in connection with the general obligations enshrined in Article 1.1 of said instrument.

V. CONCLUSIONS

34. Based on the foregoing considerations of fact and law, the Inter-American Commission concludes that the instant petition meets the requirements of admissibility set forth in Articles 31 and 34 of the Rules of Procedure and Articles 46 and 47 of the American Convention and, without prejudice to the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the instant petition admissible in regard to Articles 4, 5, 8, 19 and 25 of the American Convention, in light of the obligations established in Article 1.1 of said instrument;
2. To notify the parties of the instant decision;
3. To proceed to the analysis of the merits of the matter; and
4. To publish this decision and include it in the 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.