

REPORT N° 27/92
CASE 10.957
MEXICO
September 28, 1992

BACKGROUND:

A. Processing with the Commission

1. On July 11, 1991, the Inter-American Commission on Human Rights received a petition filed against the State of Mexico by Mr. Luis Sánchez Aguilar, Chairman of the Social Democratic Party (PSD), on the grounds that the election authorities of Mexico had unfairly denied him conditional registration for his political party to take part in the 1991 elections, even though he had satisfied the legal requirements to obtain that registration; the State arbitrarily denied the appeal he filed against the decision that denied him the conditional registration, thereby denying him his right of association and his political rights. As for the first aspect, he explained at length why, in his judgment, the PSD fulfilled each of the requirements that the election law stipulates for a party to be registered.

2. The Commission began to process this case and sent the Mexican Government the pertinent parts of the petition on October 17, 1991.

3. On January 17, 1992, a reply was received from the Government, which was forwarded to the petitioner on February 28, 1992. Briefly, this reply alleges that the petition is inadmissible because the remedies under domestic law have not been exhausted. It basically uses two arguments: that the appeal was filed extemporaneously and the eventual viability of a suit of *amparo*. It then analyzes the merits of the case by going through each of the points raised by the petitioner, and insisted that the substantive requirements to be given conditional registration were not fulfilled.

4. The petitioner sent his observations on the Government's reply on April 9, 1992. The pertinent parts of the petitioner's observations were forwarded to the Government on June 5, 1992, and its final reply was received at the Commission on August 4. Essentially, the arguments that each party initially invoked were repeated in these new communications.

(*) The petitioner Mr. Luis Sánchez Aguilar, by note of December 31, 1992, presented his observations on Report N° 27/92. Nevertheless, in the view of the Commission, their content does not merit altering its report.

B. The issues raised

5. There are two basic sides to the present case, i.e., the formal side, concerning the discussion of the admissibility or inadmissibility of the appeal and the eventual possibility of instituting a suit for *amparo*; and then the substantive issue, i.e., the decision as to whether or not the PSD effectively met the requirements under Mexican law to be given conditional registration as a political party. The Commission will analyze the formal question, which will be determined whether or not the merits of the case should be examined. The following is the case presented by the petitioner and the Government's rebuttal.

6. The Commission believes that the following chronological summary would be helpful in understanding the discussion concerning the admissibility or inadmissibility of the appeal:

11/5/90: The Federal Electoral Institute (IFE), published an announcement in the Federation's Official Gazette, directed at organizations and groups that wished to participate in the 1991 elections, so that they might obtain their conditional registration as political parties.

11/27/90: The Social Democratic Party (PSD) presented its registration application.

12/21/90: A commission was appointed at the Federal Election Institute (IFE) to prepare a draft opinion on the PSD's request.

1/15/91: The IFE Commission found the application for an conditional registration inadmissible, alleging that the PSD did not meet the requirements stipulated in the Federal Code of Election Institutions and Procedures (COFIPE).

1/22/91: The General Council of the IFEL, to which the IFE's Commission opinion was submitted, issued a decision endorsing the Commission's opinion and thereby denying the application for conditional registration.

1/23/91: The IFEL's Secretary General personally notified the PSD of the denial of the application for registration and attached a copy of the decision of the General Council of the IFEL.

1/28/91: The PSD filed an appeal against the IFEL's decision.

1/31/91: The decision of 1/22/91 was published in the Federation's Official Gazette.

2/9/91: The Central Chamber of the Federal Election Tribunal issued a ruling whereby the appeal was thrown out on the grounds that it was "patently unfounded."

7. Before analyzing the arguments brought by the Government of Mexico and the petitioner, for practical purposes the Commission will transcribe those procedural provisions of the Federal Code of Election Institutions and Procedures (COFIPE) whose interpretation is the contested issue:

Article 33, paragraph 6: "When registration is called for, the Council shall issue the respective certification. If the application for registration is denied, the Council shall explain the reasons and shall advise the interested organization or group. The corresponding decision must be published in the Federation's Official Gazette."

Article 302: "The petitions for review and appeal must be filed within three days of the date on which the act or decision being challenged is learned or reported."

Article 305.1: "Notifications may be done personally, by courts, by official memorandum, by certified mail or by telegram, whichever is most effective in reporting the act or resolution, except when this Code stipulates otherwise."

Article 311.1: "Acts or decisions made public through the Federation's Official Gazette or national or local newspapers or magazines, or by posting notices in the chambers of the Institute and of the Tribunal or in public places, under the terms of this Code, need not be personally notified and shall take effect on the day following their publication or posting."

Article 314.1: "Any suit filed under the following circumstances shall be regarded as patently inadmissible and therefore dismissed:

c) Submitted after the deadlines stipulated in this Code."

8. A summary of the Government's arguments:

In its reply of January 17 and August 4, 1992, the Government cites the rules and regulations of COFIPE (articles 33, 302, 314.1, paragraph b) to contend that the appeal must be filed within three days of the date on which the act or decision being challenged is learned or reported. It further states that the appeal in this case was filed two days after the time period prescribed by the election law had expired; hence, it was rejected, since under that law, those petitions presented after the stipulated deadline shall be regarded as patently inadmissible and, accordingly, shall be dismissed.

As to the interpretation of Article 33.6 of COFIPE, the Government stated that "when the Council of the Federal Electoral Institute refuses to register a political party, its refusal must be honored -as was done in the resolution denying conditional registration to the political organization that calls itself the "Social Democratic Party" (PSD)- observing the three requirements stipulated in that article which are:

- to explain the reasons
- to advise the interested organizations
- to publish the decision in the Official Gazette.

The Government added that these three elements are "independent and at the same time complementary, since independence does not preclude complementarity." It concluded that had the lawmaker wanted notification to be made by publishing the decision in the Official Gazette, said lawmaker would have so stipulated; but nothing of the sort can be inferred from Article 33.

9. Summary of the petitioner's argument:

The petitioner argued that under Article 33, paragraph 6 of COFIPE, the only valid means of notification when an application for conditional registration was denied was publication in the Federation's Official Gazette. The petitioner added that under Article 311, paragraph 1 of COFIPE, personal notification of the decision was not required, because the law provided for notification through the Federation's Official Gazette.

In the petitioner's note of April 9, 1992, concerning the interpretation of Article 33 of COFIPE, the petitioner reiterated that said article stipulated publication in the Official Gazette as the means by which the interested parties were to be notified and that this should be interpreted in light of Article 311.1. The petitioner emphatically denied the Mexican Government's interpretation to the effect that these were independent but at the same time complementary provisions, and insisted that the only valid and legally viable means to notify the interested parties of a decision such as the one being challenged, was publication in the Official Gazette.

OBSERVATIONS:

10. The petition satisfies the requirements stipulated in Article 32 of the Commission's Regulations, inasmuch as the procedure provided for in Article 34 thereof has been exhausted.

11. In its reply of January 17, 1992, the Government did not challenge the admissibility of the petition based on a failure to exhaust domestic remedies, so that the Commission will begin by addressing this issue, which was expressly raised.

12. To determine how the rules in dispute should be interpreted, the Commission must consider what constitutes personal notification and what constitutes publication in the Official Gazette, as recognized in international doctrine. In this regard, the Government of Mexico, in its note of January 17, 1992, stated the following: "The purpose of personal notification is to advise the interested party of the sense and content of the resolution, while the purpose of publication is to put it in the public domain, make it known to third parties...."

Under modern procedural law, the purpose of personal notification is basically to advise the interested party of a decision that affects said party directly, while publication is intended to inform the general public of a decision that affects everyone.

A personal communication is precisely designed to allow a party affected by a resolution or administrative act to challenge the decision; publication is to inform the general public of the outcome of a matter submitted for its consideration. The latter is because electoral procedural law is public law, since in essence it concerns the general interests. For reasons of juridical security, decisions by electoral bodies must be made known to the citizenry by means of publication through the means that the law deems appropriate.

The Mexican Government's interpretation, therefore, conforms to the general principles of procedural law and the Commission, therefore, shares its interpretation.

13. There is one strictly objective point, regardless of the interpretation one chooses to use: if the time period began as of the personal notification, and if the communication sent by the PSD on January 23 constituted that personal notification, then the time period began on January 24 and expired on January 26, according to the Government's argument. If, on the other hand, the time period began as of publication in the Official Gazette, as the petitioner alleges, and said publication occurred on January 31, then the valid legal time period for filing the complaint began on February 1 and expired on February 3. The Commission would like to point out that the petitioner filed the appeal on January 28, 1992. Regardless of the interpretation used, no legal time period was then in effect. This means that the appeal was, regardless of the interpretation used, presented extemporaneously. But that saying subcommission, which predates the decision's publication, allows one to presume that not even the petitioner himself regards this--the publication--as the point at which the time period for filing the appeal began.

14. The Commission, then, believes at least in principle, that the appeal was filed when the deadline for doing so had already expired and hence became inadmissible. The petitioner, therefore, did not invoke any of the grounds stipulated in Article 46.2 of the Convention for an exception in the case of his petition.

15. Citing its own doctrine and in keeping with previous decisions, the Commission notes that in its Resolution 29/89, on Case 10,198 (Nicaragua) wherein the petitioner presented an appeal that was denied because it was presented after the deadline, it found that for that reason "it would therefore not be appropriate to consider the content of a document that was not made part of the judicial records."¹

16. As a consequence of the foregoing, the Commission believes that it would be improper for it to address any of the other grounds for inadmissibility or the merits of the case.

CONCLUSIONS:

17. The Commission therefore decides:

- a) To declare inadmissible the petition presented by Mr. Luis Sánchez Aguilar, based on Article 47.a of the American Convention on Human Rights, for the reasons stipulated under the preceding paragraph.
- b) The Inter-American Commission on Human Rights will not address the merits of the case and therefore need not address the validity of the reasons cited by the petitioner to assert that he was unfairly denied the conditional registration he had requested, for the reasons stated in the preceding paragraph.

¹ Annual Report of the Inter-American Commission on Human Rights 1989-1990, page 95.