

COUR INTERNATIONALE
DE JUSTICEINTERNATIONAL COURT
OF JUSTICE

Press Release 2004/16

Avena and Other Mexican Nationals
(Mexico v. United States of America)

The Court finds that the United States of America has breached its obligations
to Mr. Avena and 50 other Mexican nationals and to Mexico
under the Vienna Convention on Consular Relations

THE HAGUE, 31 March 2004. Today the International Court of Justice, the principal judicial organ of the United Nations, delivered its Judgment in the case concerning Avena and Other Mexican Nationals (Mexico v. United States of America).

In its Judgment, which is final, without appeal and binding on the Parties, the Court, with regard to the merits of the dispute,

- finds by fourteen votes to one that, by not informing, without delay upon their detention, the 51 Mexican nationals referred to in paragraph 106 (1) above of their rights under Article 36, paragraph 1 (b), of the Vienna Convention on Consular Relations of 24 April 1963, the United States of America breached the obligations incumbent upon it under that subparagraph;
- finds by fourteen votes to one that, by not notifying the appropriate Mexican consular post without delay of the detention of the 49 Mexican nationals referred to in paragraph 106 (2) above and thereby depriving the United Mexican States of the right, in a timely fashion, to render the assistance provided for by the Vienna Convention to the individuals concerned, the United States of America breached the obligations incumbent upon it under Article 36, paragraph 1 (b);
- finds by fourteen votes to one that, in relation to the 49 Mexican nationals referred to in paragraph 106 (3) above, the United States of America deprived the United Mexican States of the right, in a timely fashion, to communicate with and have access to those nationals and to visit them in detention, and thereby breached the obligations incumbent upon it under Article 36, paragraph 1 (a) and (c), of the Convention;
- finds by fourteen votes to one that, in relation to the 34 Mexican nationals referred to in paragraph 106 (4) above, the United States of America deprived the United Mexican States of the right, in a timely fashion, to arrange for legal representation of those nationals, and thereby breached the obligations incumbent upon it under Article 36, paragraph 1 (c), of the Convention;
- finds by fourteen votes to one that, by not permitting the review and reconsideration, in the light of the rights set forth in the Convention, of the conviction and sentences of Mr. César Roberto Fierro Reyna, Mr. Roberto Moreno Ramos and Mr. Osvaldo Torres Aguilera, after the violations referred to in subparagraph (4) above had been established in respect of those individuals, the United States of America breached the obligations incumbent upon it under Article 36, paragraph 2, of the Convention;
- finds by fourteen votes to one that the appropriate reparation in this case consists in the obligation of the United States of America to provide, by means of its own choosing, review and reconsideration of the convictions and sentences of the Mexican nationals referred to in subparagraphs (4), (5), (6) and (7) above, by taking account both of the violation of the rights set forth in Article 36 of the Convention and of paragraphs 138 to 141 of this Judgment;
- unanimously takes note of the commitment undertaken by the United States of America to ensure implementation of the specific measures adopted in performance of its obligations under Article 36, paragraph 1 (b), of the Vienna Convention; and finds that this commitment must be regarded as meeting the request by the United Mexican States for guarantees and assurances of non-repetition;
- unanimously finds that, should Mexican nationals nonetheless be sentenced to severe penalties, without their rights under Article 36, paragraph 1 (b), of the Convention having been respected, the United States of America shall provide, by means of its own choosing, review and reconsideration of the conviction and sentence, so as to allow full weight to be given to the violation of the rights set forth in the Convention, taking account of paragraphs 138 to 141 of this Judgment."

Reasoning of the Court

In its Judgment the Court begins by outlining the history of the case. It recalls that on 9 January 2003 Mexico instituted proceedings against the United States of America in a dispute concerning alleged breaches of Articles 5 and

36 of the Vienna Convention on Consular Relations of 24 April 1963 in relation to the treatment of a number of Mexican nationals who had been tried, convicted and sentenced to death in criminal proceedings in the United States. The original claim related to 54 such persons, but as a result of subsequent adjustments by Mexico, only 52 individual cases are involved. On 9 January 2003 Mexico also asked the Court to indicate provisional measures, and in particular to order the United States to take all measures necessary to ensure that no Mexican national was executed pending a final decision of the Court. On 5 February 2003 the Court unanimously adopted an Order indicating such measures, stating inter alia that the "United States of America shall take all measures necessary to ensure that Mr. César Roberto Fierro Reyna, Mr. Roberto Moreno Ramos and Mr. Osvaldo Torres Aguilera . . . are not executed pending final judgment in these proceedings."

The Court then examines four objections of the United States to the Court's jurisdiction and five to the admissibility of the claims of Mexico. It rejects those objections after first having rejected the objection of Mexico to the admissibility of the United States objections.

Ruling on the merits of the case, the Court first addresses the question of whether the 52 individuals concerned had Mexican nationality only, or whether some of them were also United States nationals, as claimed by that State. Concluding that the United States has not proved that claim, the Court finds that the United States did have obligations (to provide consular information) under Article 36, paragraph 1 (b), of the Vienna Convention towards the 52 Mexican nationals.

The Court then examines the meaning of the expression "without delay" used in paragraph 1 (b) of Article 36. It finds that the duty to provide consular information exists once it is realized that the person is a foreign national, or once there are grounds to think so, but considers that, in the light inter alia of the Convention's travaux préparatoires the term "without delay" is not necessarily to be interpreted as meaning "immediately upon arrest". The Court then concludes that, on the basis of this interpretation, the United States has nonetheless violated its obligation to provide consular notification in all of the cases save one.

The Court then takes note of the interrelated nature of the three subparagraphs (a), (b) and (c) of paragraph 1 of Article 36 of the Vienna Convention and finds, in 49 of the cases, that the United States has also violated its obligation under subparagraph (a) to enable Mexican consular officers to communicate with, have access to and visit their nationals; while, in 34 cases, it finds that the United States has also, in addition, violated its obligation under subparagraph (c) to enable Mexican consular officers to arrange for legal representation of their nationals.

The Court then turns to Mexico's submission in relation to paragraph 2 of Article 36, whereby it claims that the United States violated its obligations under that paragraph by failing to provide "meaningful and effective review and reconsideration of convictions and sentences impaired by a violation of Article 36 (1)", inter alia as a result of the operation of the "procedural default" rule. The Court begins by observing that the procedural default rule has not been revised since it drew attention in its Judgment in the LaGrand case to the problems which its application could cause for defendants who sought to rely on violations of the Vienna Convention in appeal proceedings. The Court finds that in three cases paragraph 2 of Article 36 has been violated by the United States, but that the possibility of judicial re-examination is still open in 49 of the cases.

Turning to the legal consequences of the above-found breaches and to what legal remedies should be considered, the Court notes that Mexico seeks reparation in the form of "restitutio in integrum", that is to say partial or total annulment of conviction and sentence, as the "necessary and sole remedy". The Court, citing the decision of its predecessor, the Permanent Court of International Justice, in the Chorzów Factory case, points out that what is required to make good the breach of an obligation under international law is "reparation in an adequate form". Following its Judgment in the LaGrand case the Court finds that in the present case adequate reparation for violations of Article 36 should be provided by review and reconsideration of the convictions and sentences of the Mexican nationals by United States courts.

The Court considers that the choice of means for review and reconsideration should be left to the United States, but that it is to be carried out by taking account of the violation of rights under the Vienna Convention.

The Court then addresses the function of executive clemency. Having found that it is the judicial process that is suited for the task of review and reconsideration, the Court finds that the clemency process, as currently practised within the United States criminal justice system, is not sufficient in itself to serve that purpose, although appropriate clemency procedures can supplement judicial review and reconsideration.

Finally, with regard to Mexico's request for the cessation of wrongful acts by the United States, the Court finds no evidence of a "regular and continuing" pattern of breaches by the United States of Article 36 of the Vienna Convention. And as to its request for guarantees and assurances of non-repetition the Court recognizes the United States efforts to encourage implementation of its obligations under the Vienna Convention and considers that that commitment by the United States meets Mexico's request.

At the end of its reasoning, the Court emphasizes that, in the present case, it has been addressing issues of principle from the viewpoint of the general application of the Vienna Convention. It observes that, while the present case concerns only Mexicans, its Judgment cannot be taken to imply that the Court's conclusions do not apply to other foreign nationals finding themselves in similar situations in the United States.

The Court finally points out that its Order of 5 February 2003 indicating provisional measures mentioned above, according to its terms and to Article 41 of the Statute, was effective pending final judgment, and that the obligations of the United States in that respect are, with effect from the date of the Judgment, replaced by those declared in this Judgment. The Court observes that it has found in relation to the three persons concerned in the Order (among others), that the United States has committed breaches of its obligations under Article 36, paragraph 1, of the Vienna Convention; and that moreover, in respect of those three persons alone, the United States has also committed breaches of Article 36, paragraph 2. The review and reconsideration of conviction and sentence required by Article 36, paragraph 2, which is the appropriate remedy for breaches of Article 36, paragraph 1, has not been carried out. The Court considers that in these three cases it is for the United States to find an appropriate remedy having the nature of review and reconsideration according to the criteria indicated in the Judgment.

Composition of the Court

The Court was composed as follows: President Shi; Vice-President Ranjeva; Judges Guillaume, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby, Owada, Tomka; Judge ad hoc Sepúlveda; Registrar Couvreur.

President Shi and Vice-President Ranjeva append declarations to the Judgment of the Court; Judges Vereshchetin, Parra-Aranguren and Tomka and Judge ad hoc Sepúlveda append separate opinions to the Judgment of the Court.

A summary of the Judgment is published in the document entitled "Summary No. 2004/1", to which summaries of the declarations and opinions attached to the Judgment are annexed. The present Press Release, the summary and the full text of the Judgment also appear on the Court's website under the "Cases" heading (www.icj-cij.org).