

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

KEY FACTS

- In 1965, after signing a bilateral consular agreement to protect their citizens going into The USA, they signed the Vienna Convention in order to provide additional protection to its citizens who were travelling to The USA (GOB) and to enable them the right of consular help. Along with these efforts, Mexico created The Mexican Capital Legal Assistance Program to help Mexican's facing the death penalty in The United States and to give them the right to defensive legal assistance from Mexican authorities. Although both The United States and Mexico signed the Vienna Convention, *Avena and Other Mexican Nationals* was the third ICJ case within five years concerning The United States' failure to notify foreign nationals facing the death penalty of their rights under the Vienna Convention (HRW). Article 36 of the Vienna Convention on Consular Relations outlines consular information as an individual right that foreign nationals have when they are arrested abroad which allows government officials to provide nationals with assistance, legal counsel and fair trials "without delay" (University of Oxford). A state is required to provide "meaningful and effective review and reconsideration of convictions and sentences impaired by a violation of Article 36 (1)." The USA did not grant three Mexican nationals (Cesar Roberto Fierro Reyna, Mr. Roberto Moreno Ramos and Mr. Osvaldo Torres Aguilera), who were facing the risk of execution in the near future, meaningful and effective review and reconsideration of their sentences, after failing to provide them with their Article 36 rights. In addition, despite the ICJ's decision to approve Mexico's request for provisional measures on February 5, 2003, where The United States was obliged to "take all measures necessary to ensure that Mr. Cesar Roberto Fierro Reyna, Mr. Roberto Moreno Ramos and Mr. Osvaldo Torres Aguilera [were] not executed pending final judgment in these proceedings" (ICJ), Texas executed one of the Mexican nationals, Jose Medellin, on July 16, 2003 (Hague). This decision went against Article 94(1) of The UN Charter which illustrates that each member of The United Nations must "comply with the decision of the International Court of Justice in any case to which it is a party" (UN Legal). There is a prominent issue of racism against Mexicans in The USA, which can be understood when analyzing Donald Trump's decision to spend over \$5 billion (that could have been put towards more important causes like climate change) to put up a wall at the border of Mexico and The United States in order to prevent Mexicans from illegally immigrating to The United States. Many of the people who have been stopped at the border are actually not trying to cross illegally, but are seeking asylum. It is important to analyze whether the treatment of the 54 Mexican nationals who were denied their consular rights was a result of the systemic racism against Mexicans in The United States.

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LEGAL ISSUES

When judging the case of *Avena and Other Mexican Nationals* and when providing remedies, it is critical to examine the effect that the violations of Article 36 (1) under the VCCR had and whether they caused prejudice against the Mexican nationals, leading to their criminal convictions. This would help determine whether the violations should result in revision that leads to partial or total annulment of the Mexican national's sentences.

Considering that the execution of Mr. Medellin in Texas happened before the case of *Avena and Other Mexican Nationals* was closed and when provisional measures were in place (breaching Article 94(1) of the UN Charter), it is important to answer whether Texas' state laws should take precedence over the demands of the ICJ and The United States Congress or whether the actions of Texas were illegal.

↳ are consular rights human rights?

KEY ARGUMENTS

- Mexico claimed that the violation of Article 36 of the VCCR should result in partial or total annulment of the convictions of the nationals as their lack of consular information and assistance caused prejudice, which resulted in their death sentences (ASIL). They argued that this violation and The United States' failure to comply with the orders of the ICJ caused harm to both the nationals and the country of Mexico. Mexico expressed that The United State's lack of initiative when implementing *Avena* and the provisional measures into Medellin's execution hearing illustrated that The USA's assumption of paragraph 153(9) of the judgement, (which indicates review and

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reconsideration of the sentences of the Mexican nationals) is only an obligation of means and not an obligation of ends. Last, Mexico stressed that the principles and lack of justice in *LaGrand* should be applied to *Avena* as in this case, the court has the chance to save the lives of 54 Mexican nationals who have suffered from The USA's failure to comply with the obligations of the VCCR (ICJ Oral Arguments in Avena).

or it would have made a difference in their safety of the public. In contradiction to Mexico's claims, The USA asserted that consular assistance is not essential to a fair trial and that it has an indirect effect on due process at most -- thus maintaining that the Mexican nationals' lack of consular assistance did not result in prejudice or to their convictions (ICJ Oral Arguments in Avena).

Regarding The United States' violations of the Vienna Convention in 54 cases of Mexican nationals who were sentenced to death, The USA guaranteed non-repetition of their violations and a commitment to following the Vienna Convention in the future. They held that Mexico can not prove that The United States has exhibited a pattern of non-compliance with the Vienna Convention and that Mexico can not prove that their non-compliance is a systemic issue. In terms of providing consular assistance in a timely matter, they advocated that Article 36(1) does not permit consular assistance before interrogation takes place as it could jeopardize the investigation along with the safety of the public. In contradiction to Mexico's claims, The USA asserted that consular assistance is not essential to a fair trial and that it has an indirect effect on due process at most -- thus maintaining that the Mexican nationals' lack of consular assistance did not result in prejudice or to their convictions (ICJ Oral Arguments in Avena).

DECISION AND REASON FOR JUDGEMENT

The court declined that the violation of Article 36 of the VCCR should lead to automatic full or partial annulment and stated that remedies have to be made on a case-to-case basis (despite Mexico's arguments) with consideration to whether the infringement of their rights led to actual prejudice, resulting in the defendant's conviction (OHCHR).

The ICJ gave a binding obligation to The USA not to execute Medellin under Article 94(1) of the UN Charter until he received meaningful review and reconsideration of his sentence. Despite their orders, this demand was self-executing, meaning that the congress could decide whether they wanted to comply. The US Congress decided to grant Mr. Medellin a domestic law-right of review and reconsideration of his sentencing on July 14, 2008, making this decision no longer self-executing. When Texas went against this decision of the Congress, it was unlawful as it breached treaties signed by The USA, along with due process that gives a criminal defendant the right not to be deprived of "fundamental fairness essential to the very concept of justice" (World Courts).

RATIO

On January 9, 2003, Mexico filed proceedings against The United States of America concerning the violations of Article 5 and 36 of the Vienna Convention on Consular Relations (VCCR) in 54 cases where Mexican nationals had been sentenced to the death penalty in The USA. The ICJ determined that the appropriate remedy for The United States' violation was to implement the review and reconsideration of the cases. Despite this, along with the decision of provisional measures, Mr. Medellin, one of the Mexican nationals, was executed before the end of the case and against the obligations of the ICJ. *Avena* clarified the severity of breaking ICJ, International Law and VCCR obligations concerning consular rights, as with the lack of review and reconsideration and access to consular rights, a Mexican national lost his life. Just like the *LaGrande* case, *Avena* can be used as a precedent case to any subsequent cases in order to clarify or to provide guidance in the application of the law. The Doctrine of Consent Reciprocity deals primarily with the principle that favours, benefits, penalties or abiding by the law that are followed by one state should in turn be followed by another. When The USA failed to provide the 54 Mexican nationals with consular information, they disrespected Mexico and violated the Doctrine of State Reciprocity. Referring to this concept, why should Mexico follow the Vienna Convention or respect the rights of The United States if they will not do the same? The Doctrine of International Legal Personality is applicable to this case as both Mexico and The USA are states with legal personality, have signed and ratified treaties, can be subject to and have to abide by International Law.

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more broadly, why is this case important to study? own opinion ...

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