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High Court Issues Controversial Ruling On 2009 Fire At Sonora Day-care Center

by LADB Staff

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Citizen groups and nongovernmental organizations (NGOs) occasionally second guess decisions of the Mexican high court (Suprema Corte de Justicia de la Nación, SCJN), often threatening to bring cases that have not been resolved in their favor to international institutions like the Inter-American Commission on Human Rights (IACHR) in Washington or the Inter-American Court on Human Rights (IACHR) in San José, Costa Rica, both part of the Organization of American States (OAS). But few cases have elicited such citizen outrage as the SCJN's decision on June 17 to clear high-level federal officials and former Sonora Gov. Eduardo Bours from any culpability in a fire that killed 49 children at a federally sponsored day-care center in the city of Hermosillo in June 2009. Another 70 children suffered severe injuries. The Guardería ABC, housed in a converted warehouse, was a privately run day-care center licensed by the Instituto Mexicano de Seguro Social (IMSS), which oversees the operation of more than 1,500 day-care centers in Mexico.

The facility was considered a death trap because it lacked fire alarms and a sprinkler system, safety features that the IMSS should have required. Because of this, the facility was easily consumed by an electrical fire that started in a neighboring warehouse used by the Sonora state government to store tires, license plates, and documents (SourceMex, July 01, 2009-07). Court says high-level officials not responsible. In the aftermath of the incident, the federal and state governments traded accusations of blame for the fire, but critics blamed both branches of government. The animosity against the Sonora state government was so strong that Bours' party, the Partido Revolucionario Institucional (PRI), lost a gubernatorial election in July 2009 that the party had widely been expected to win before the fire at Guardería ABC (SourceMex, July 08, 2009).

The incident prompted the Procuraduría General de la República (PGR) and Procuraduría General de Justicia del Estado de Sonora (PGJE Sonora) to launch investigations. The matter also came before the SCJN, which in its role as an investigative body under Article 97 of the Mexican Constitution, addressed possible violations of constitutional rights and guarantees but had no jurisdiction over the criminal aspects of the case. Upon accepting the case, the SCJN named a special investigative commission led by Justice Arturo Zaldívar, which put together a report listing 19 federal, state, and local functionaries it labeled as "involved" in violations stemming from the blaze. After three days of emotionally charged televised hearings, the high court concurred that the fire resulted in "grave violations" of the rights of the victims but that high-level officials could not be held responsible in this case.

The justices did ascribe responsibility to seven lower-level officials, but others like Bours, former IMSS director Juan Molinar Horcasitas, and current IMSS director Daniel Karam managed to elude blame. In reaching their decision, the justices said there was no evidence of systemic failure, and, therefore, no high-level official could be held responsibility in the case. The justices did acknowledge the limitations under which they were allowed to review the situation. "We have

done what the Constitution allows us," said Chief Justice Guillermo Ortiz Mayagoitia. The justices emphasized that their ruling "exonerates no one." Decision attracts widespread criticism Critics said the court had the power to expand the investigation and instead decided to limit itself. Among those who suggested that the court sold out was Pedro Nava, who once headed the division of constitutional controversies at the SCJN. He said the justices engaged in a false debate on whether they had jurisdiction to declare high-level officials responsible, foregoing the possibility of creating an opening to use the Constitution as an instrument to truly defend human rights. Nava said the high court has shown a similar lack of foresight in other cases involving human rights violations by government entities, including the detention of independent journalist Lydia Cacho (SourceMex, December 05, 2007) and cases involving government actions against protestors in Atenco in Mexico state (SourceMex, August 22, 2007) and Oaxaca (SourceMex, October 28, 2008). "One would think that, with the high salaries that the justices receive and the general stability of their 15-year terms, the members of the court would be more independent," Nava said in an interview with the Mexico City daily newspaper La Jornada. "Unfortunately, the process by which they are chosen nominated by the executive and ratified by two-thirds of the Senate creates the need for them to return the favor to those who helped them attain their positions."

Miguel Carbonell, a constitutional scholar at the Instituto de Investigaciones Juridicas at the Universidad Nacional Autonoma de Mexico (UNAM), said Justice Zaldívar presented a thorough report that strongly emphasized how the children's constitutional rights were violated. But he said those findings were wasted because of inconsistencies in the thinking of the justices, who failed to recognize that, whenever a public official is "involved" in a situation, that official also should be held accountable. "The logic is so easy, and therefore it is so hard to understand why eight Supreme Court justices voted against identifying those responsible for the deaths of 49 children and the injuries of the others," Carbonell wrote in the Mexico City daily newspaper El Universal. Carbonell said it is the consensus of many Mexicans that the "court is good at losing itself in formalities...and is lacking in the skill to construct a legal discourse that would promote the effective guarantee of our fundamental rights." Other political observers had similar comments. "Mexico has a Constitution that contains all the elements to develop an exemplary democracy," wrote Lourdes Bueno in the Guadalajara-based daily newspaper El Informador. "But we lack a sufficient number of justices who are committed to transcending their responsibilities and meeting their obligations under the Constitution." "The court had in its hands a historic opportunity to do something for the people of Mexico and they didn't do it," said Patricia Duarte, whose son died in the fire. Interior secretary defends court But not all reactions to the SCJN's decision were negative.

Interior Secretary Fernando Gómez Mont described the ruling by the justices as "precise, timely, and difficult," and he criticized the climate of "lynching" that followed the decision. The secretary called on jurists to publicly defend the process. "If you remain silent, you pave the way for these types of accusations," said Gómez Mont, citing the need for healing in the wake of the tragedy. The high court's decision does not preclude the filing of criminal charges against high- and low-level officials following the conclusion of the PGR and PGJE Sonora investigations. There is a strong possibility that charges will be brought against the owners of the Guardería ABC. And there are other ways by which officials might be judged.

On June 22, a leadership council (Junta de Coordinación Política) in the Chamber of Deputies unanimously approved a motion to study the possibility of holding a political trial against Molinar

Horcasitas, who was in charge of the IMSS at the time of the incident. Molinar has since been named communications and transportation secretary, replacing Luis Tellez. The council directed congressional legal counsel to study the viability of holding such a trial against Molinar for failing to ensure the safety of its facilities. The parents of the children who died in the fire have formed an organization called Movimiento 5 de Junio, in reference to the date when the incident occurred.

The group plans to present a complaint to two UN agencies, the Office of the High Commissioner on Human Rights (OHCHR) and its Committee on the Rights of the Child (CRC). Attorney Luis Ramos said the main goal is to have the two agencies make recommendations to the Mexican government. But the parents did not discard the possibility of bringing the case to the IACHR in Costa Rica if the criminal trials exonerate high-level officials. "We know that we will have justice," said Patricia Duarte. "Regrettably, it won't come here in Mexico. The SCJN is not the court of last resort. We will keep fighting."

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