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Title/Style of Cause:	Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo de Mur v. Peru
Doc. Type:	Decision
Decided by:	Chairman: Carlos Ayala Corao; First Vice Chairman: Robert K. Goldman; Second Vice Chairman: Jean Joseph Exume. Commisioners: Alvaro Tirado Mejia, Helio Bicudo.
Dated:	5 May 1998
Citation:	Aguirre Roca v. Peru, Case 11.760, Inter-Am. C.H.R., Report No. 35/98, OEA/Ser.L/V/II.102, doc. 6 rev. (1998)
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I. BACKGROUND

1. On June 2, 1997, the Inter-American Commission on Human Rights (hereinafter "the Commission") received a complaint against the Republic of Peru (hereinafter "the Peruvian State" or "the State"). The pertinent parts of that complaint were transmitted to the State through a letter dated July 16, 1997, requesting information on the events denounced and any other information that might enable the Commission to judge whether or not all domestic remedies had been exhausted in this case.

2. On August 23, 1996, Law No. 26,657 was passed, which interprets article 112 of the Constitution of Peru, entitling President Alberto Fujimori F. to seek a second [consecutive] term in office. On August 29, 1996, the Bar Association of Lima filed an "action of unconstitutionality" with the Constitutional Court stating that the aforementioned law violated article 112 of the Constitution.

3. On December 27, 1996, the Constitutional Court issued its judgment thereon, in exercise of its broad interpretative powers [potestad de control difuso], ruling that Law No. 26,657, published on January 17 and 18, 1997, could not apply to President Fujimori.[FN1]

[FN1] Broad control of the constitutionality of legal norms is established in article 138 of the Constitution of Peru: "In all cases in which an incompatibility exists between a constitutional norm and a legal norm, the judges prefer the first."

The requests to establish the committee called for: "(1) the appointment of a multipartisan seven-member investigating committee to clarify the accusation made by Dr. Delia Revoredo de

Mur..."; and (1) the establishment of an investigating committee to look into the alleged orders to pressure the Constitutional Court..."

4. On January 14, 1997, days before the publication of that judgment, four members of Congress from the majority party, some of whom later composed the investigating and prosecuting committees (infra), sent a letter to the members of the Court in which they attempted to block the ruling finding Law No. 26,657 inapplicable.

5. On January 20, 1997, the Bar Association of Lima filed a motion for clarification of the judgment delivered by the Constitutional Court on December 27, 1996. That clarification, according to the petitioners, in keeping with a verbal agreement among members of the Court that was subsequently ratified in the minutes of the administrative plenary session, was dealt with by Justices Aguirre Roca, Rey Terry, and Revoredo de Mur, who stated that there was nothing to clarify.

6. On January 15, 1997, Justice Delia Revoredo publicly denounced the possible removal of documents from her office. On January 15 and 20, 1997, several members of Congress requested the establishment of an investigating committee to look into the accusations made by the aforementioned Justice.[FN2]

[FN2] According to information from the EFE news agency, as of April 14, 1998, Delia Revoredo de Mur and her husband were seeking asylum in Costa Rica, due to alleged pressure and threats to their physical integrity.

7. On February 28, 1997, the Congress approved the establishment of a committee to investigate the accusations of harassment and other forms of pressure exerted on the Court.

8. Meanwhile, the congressional investigating committee reached a majority opinion that Dr. Ricardo Nugent (President), Dr. Manuel Aguirre Roca, Dr. Guillermo Rey Terry, and Dr. Delia Revoredo de Mur should be accused of violating the Constitution for having "usurped the name of the Constitutional Court by deciding on the request for clarification filed by the Bar Association of Lima in unconstitutionality suit No. 002-96-TC."

9. On the occasion of that accusation, the full Congress, through an agreement of May 28, 1997, reached a majority decision to dismiss Justices Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo de Mur, for "violation of the constitution."

II. PETITIONERS

10. On May 20, 1997, a group of members of the Congress of Peru (hereinafter "the petitioners") filed a complaint with the Commission against the Republic of Peru for violating the human rights of the Constitutional Court justices dismissed from their posts.

III. PROCESSING BY THE COMMISSION

11. The pertinent parts of the petitioners' complaint were transmitted to the State on July 16, 1997. Through a note dated October 16, 1997, the State presented its response, wherein it alleges that the complaint is inadmissible because domestic remedies had not been exhausted. The State indicated that the complaints based on the violation of a constitutional right lodged by the victims are still pending before domestic courts and that domestic remedies must be exhausted before a case can be presented to the Commission. On October 21, 1997, the Commission transmitted the pertinent parts of that response to the petitioners.

12. On February 25, 1998, during the 98th regular session, the Commission held a hearing to discuss aspects of the admissibility of this complaint. At that hearing, the parties provided the Commission with new background information. To that end, the petitioners invoked the exception provided in article 46.2 of the American Convention on Human Rights (hereinafter "the Convention).

13. In that regard, the petitioners maintain that the remedies available under domestic law are not adequate or effective and therefore do not need to be exhausted. They call into question the judicial branch, which is responsible for deciding on the complaint based on constitutional guarantees, which is being hindered by strong political interference in the government's reorganization of the judiciary. Also being disputed is the independence of the judicial branch, citing the example of the rotation of judges who deliver judgments not in the interest of the government, in violation of the principle of "juez natural" (judges whose position is created by law with general jurisdiction over an issue before or at the time it arises). Finally, the petitioners indicate that the actions of guarantee filed by the victims under domestic law should be decided upon in the Constitutional Court, the members of which are prevented from issuing a judgment thereon, in keeping with procedural norms, because they participated in the events that gave rise to the complaint.

14. They also say that the deadline for resolving the actions of guarantee lodged by the victims has long since passed, without any results as of the time of the hearing. Congress dismissed the justices named in this petition on May 28, 1997 and, almost one year later, there had still not been a final ruling on the action for the violation of constitutional guarantees filed. They further add that the deactivation of the Constitutional Court has blocked the operations of the organ controlling the constitutionality of laws, as well as the right of all citizens to an independent and impartial court.

15. The State, in turn, reiterated its allegation that domestic remedies had not been exhausted since the complaint is still pending, thus making the complaint inadmissible. It indicated that the three former justices had filed complaints based on constitutional guarantees with the judiciary that are still pending a ruling. Therefore, all the pertinent judicial bodies (the Court of First Instance, the Court of Appeals, and the Supreme Court) are operating. The State added that the final resort would be the Constitutional Court, which it said was operating. It also stated that there is no need for any ruling on the merits of the matter in dispute or the alleged events and rights invoked by the petitioners, since that would interfere with the autonomy of the jurisdictional organs of the Peruvian State.

16. With regard to the dismissed justices, the State indicated that the 1993 Constitution established proceedings to impeach a president, vice president, cabinet ministers, or members of the Supreme Court or other courts for malfeasance or misfeasance. The Congress can therefore dismiss these justices; hence the dismissal was in keeping with the law.[FN3]

[FN3] In keeping with article 99 of the Constitution of Peru, " It is the province of the Permanent Commission to make accusations in the Congress against: the President; and ...members of the Constitutional Tribunal;... for infraction of the Constitution and for all crimes committed in the exercise of their functions and for a period of five years after they have ceased their functions."

17. The State maintains that given the subsidiary nature of the international system to protect human rights, the complaint should be found inadmissible due to a failure to exhaust domestic remedies.

IV. ADMISSIBILITY

18. The State made a preliminary objection on the grounds that the petitioners failed to exhaust domestic remedies, indicating that the events that gave rise to the complaint are the subject of various proceedings in domestic courts.

19. To this end, the petitioners stated that in this case, the exceptions to the exhaustion of domestic remedies established in article 46.2 of the Convention apply, on the grounds that Peru does not have adequate remedies for protecting the rights in question or due process guaranteeing the due independence and impartiality of the court in hearing this case, in violation of articles 25 and 8 of the Convention. Furthermore, they allege an unwarranted delay in deciding upon the complaints filed, since seven months had transpired since the lodging of the complaints based on the violation of constitutional guarantees, none of which had received a final ruling. In that regard, the action for the violation of constitutional guarantees was recently resolved on September 18, 1997 in the court of first instance. It should be noted that over four months after the date of dismissal, that judgment was appealed. The Public Law Tribunal of the Superior Court of Lima ruled on the appeal on February 9, 1998. An extraordinary appeal was lodged before that Tribunal on March 19, 1998 and is still pending eleven months after the dismissal of the justices, without any final response from the domestic legal system.

20. Eleven months after the dismissal of the justices, the actions for the violation of constitutional guarantees had still not been ruled on by the courts, thus causing an unwarranted delay in protecting their rights. As a result, it has created a problem in the Constitutional Court, which does not have the necessary number of members to hear cases on the constitutionality of laws.

21. Throughout the process, particularly during the hearing held during the 98th regular session, the State did not show proof of the existence of adequate and efficient remedies within the Peruvian legal system that were applicable to the situation of the victims, particularly given

the time that has elapsed without a final ruling on the case. In this regard, article 46.1 of the Convention states that:

Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements:

that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.

22. Subparagraph 2 of that article establishes that the provisions on the exhaustion of domestic remedies shall not be applicable if:

- 46.2. a. the domestic legislation of the State concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
- b. the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
- c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

23. The parties agree that: The dismissed justices, Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo Marsano de Mur, lodged separate complaints based on the violation of constitutional guarantees, which have been handled by the Tribunal and Court of Public Law of Lima.

24. The action for the violation of constitutional guarantees is a suitable constitutional guarantee for protection from the violation of different basic rights other than liberty, in keeping with the Constitution of Peru.

25. In keeping with articles 32 and 34 of Law No. 23,506, complaints based on the violation of constitutional guarantees must be resolved, firstly, within three days of a response to the complaint and, secondly, in less than 20 days from the time the file is received.

26. The final resort in resolving actions for the violation of constitutional guarantees is the Constitutional Court.

27. The complaints based on the violation of constitutional guarantees were filed on July 25, 1997 (Aguirre Roca) and August 1, 1997 (Rey Terry and Revoredo), as were the respective appeals, and seven months have transpired since the filing of those complaints, with no final ruling thereon.

28. Bearing in mind the jurisprudence of the Inter-American Court of Human Rights (hereinafter "the Court"), which has stated that "the rule of prior exhaustion must never lead to a halt or delay that would render international action ineffective,"[FN4] such as action by the Commission, which in turn has said that "the right to a trial within a reasonable time frame provided for in the American Convention is based, among other reasons, on the need to avoid

unwarranted delays that lead to a deprivation or denial of justice for persons alleging the violation of rights protected under the aforementioned Convention.[FN5]"

[FN4] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987, Series C, No. 1, paragraph 93.

[FN5] Complaint before the Inter-American Court of Human Rights, Case 11,219 (Nicholas Chapman Blake) August 3, 1995, page 32.

29. The Inter-American Court has indicated that "Article 46(1)(a) of the Convention speaks of "generally recognized principles of international law." Those principles refer not only to the formal existence of such remedies, but also to their adequacy and effectiveness, as shown by the exceptions set out in Article 46(2).[FN6]"

[FN6] Inter-American Court of Human Rights, Velásquez, Rodríguez Case, Judgment of July 29, 1988, page 16, paragraph 63.

30. The Commission feels that from the accompanying background, it can be concluded that to date domestic remedies have been neither rapid nor effective in protecting and guaranteeing the rights of the justices. There has been a clear, unwarranted delay in processing the complaints based on the violation of constitutional guarantees lodged by the victims. Failure to resolve those complaints has affected both the justices, in particular, and the operation of a basic organ in the Peruvian legal system (the Constitutional Court), which leads this Commission to declare the case admissible.

31. With regard to passive justification, Peru is a State Party to the Convention, which it ratified on July 28, 1978. The Commission is therefore competent to hear this case.

V. CONCLUSIONS

1. The Commission concludes that the petition meets the formal admissibility requirements set forth in article 46 of the American Convention.

2. The Commission concludes that with regard to the objections of the Peruvian State regarding failure to exhaust domestic remedies, no credible evidence was presented during the process, particularly during the Commission hearing in February 1998, showing the existence of efficient remedies in the domestic courts. Therefore, the Commission feels that the exceptions provided for in article 46(2)(c) of the Convention are applicable to this case, making it unnecessary for domestic remedies to be exhausted for the Commission to be competent to hear the complaint.

3. The Commission therefore declares this case admissible.

4. The Commission will transmit this report to the State and the petitioners.
5. The Commission decides to publish this report on admissibility in the annual report to the General Assembly of the OAS.

Done and signed by the Inter-American Commission on Human Rights, in the city of Caracas, Venezuela on the 5 day of the month of May 1998. (Signed): Carlos Ayala Corao, Chairman, Robert K. Goldman, First Vice Chairman; Jean Joseph Exume, Second Vice Chairman; Commissioners Alvaro Tirado Mejía and Hélio Bicudo.