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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 31/98; Case 11.803
Session: Ninety-Ninth Special Session (5 – 8 May 1998)
Title/Style of Cause: Juan Pable Olmedo Bustas, Ciro Colombara Lopez, Claudio Marquez Vidal, Alex Munoz Wilson, Matias Insuza Tagle and Hernan Aguirre Fuentes v. Chile
Doc. Type: Decision
Decided by: Chairman: Carlos Ayala Corao;
First Vice Chairman: Robert K. Goldman;
Second Vice Chairman: Jean Joseph Exume.
Commissioners: Alvaro Tirado Mejia, Helio Bicudo.
Claudio Grossman, a Chilean member of the Commission, did not participate in the consideration or vote on this case in conformity with Article 29(2)(a) of the Regulations of the Commission.
Dated: 5 May 1998
Citation: Olmedo Bustas v. Chile, Case 11.803, Inter-Am. C.H.R., Report No. 31/98, OEA/Ser.L/V/II.102, doc. 6 rev. (1998)
Represented by: APPLICANT: the Asociacion de Abogados por las Libertades Publicas A.G.
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I. PROCESSING BY THE COMMISSION

1. On September 10, 1997 the Inter-American Commission on Human Rights (hereinafter "the Commission") received a petition concerning violation of rights protected in the American Convention on Human Rights (hereinafter "the Convention") by the Republic of Chile (hereinafter "the State," "the Chilean State," or "Chile") to the detriment of Juan Pablo Olmedo Bustos, Ciro Colombara López, Claudio Márquez Vidal, Alex Muñoz Wilson, Matías Insuza Tagle, and Hernán Aguirre Fuentes. The petition was presented on their behalf by the Asociación de Abogados por las Libertades Públicas A.G. (The Lawyers for Public Liberties A.G)

II. THE PETITION AND THE STATE'S RESPONSE

2. The case deals with the international liability that the petitioners impute to the Chilean State derived from the decision of its Supreme Court upholding the ruling of the Santiago Court of Appeals, which annulled approval for the showing of the film "The Last Temptation of Christ". The National Motion Picture Rating Board [Consejo Nacional de Calificación Cinematográfica] had granted said authorization in November, 1996. The decisions of the Chilean courts to rescind the approval granted by the National Council for Cinematographic Rating meant that the movie cannot be shown in Chile.

3. The petitioner alleges that the Chilean State has violated the freedom of thought and expression contained in Articles 12 and 13, in conjunction with Articles 1(1) and 2 of the American Convention, and Articles 26 and 27 of the Vienna Convention on the Law of Treaties and it requests that the Commission so declare; that it order that the consequences of the violation of these rights be redressed; and, that it take necessary measures to make its internal legislation compatible with the provisions of the Convention on the subject of freedom of expression.

4. In its response dated January 8, the Chilean State asserted its respect for the rule of law and the basic institutions that make up the legal and political system of the State; that although it may disagree with some of the criteria adopted by other branches of the State, it has the duty to respect their decisions and collaborate in their execution, when necessary; that the constitution of the Chilean State establishes limits for the exercise of each of the powers of State, within the framework established by the rule of law; that democratic governments cannot invalidate or annul judgments handed down by the Judiciary even when they are contrary to their interests or positions.

5. That neither is it lawful for the Government to affect the proprietary rights of the office enjoyed by those who make up the Judicial Branch, as a guarantee of its independence; that the Government has made the decision to amend part of the Constitution in order to eliminate prior censorship in the case of motion picture production and its publicity and to replace it by a system for rating films prior to their showing to the public; that the constitutional amendment bill was sent to the Chamber of Deputies on April 15 of this year for study and subsequent adoption.

6. The bill submitted by the Government has a single article, which amends Article 19, No. 12, of the Constitution of the Republic as follows:

a. In the first paragraph, after the comma following "Freedom of speech and the press", and before "without prior censorship", the following phrase is inserted: "to create and propagate the arts."

b. In the last paragraph, the term "censorship" is replaced by "rating " and the words "and publicity" are deleted.

7. The Chilean State requests that the Commission declare in its report that none of the supposed violations of human rights recounted in the communication which has given rise to this Case 11.803 are imputable to it or its responsibility in any way; that it take into consideration the legislative initiative presented by the Government aimed at amending the Constitution in order to eliminate motion picture censorship, adding that it would be willing to furnish, if necessary, additional background information.

8. The Commission reserves the in-depth analysis of the petition and the State's response for the pertinent phase in this proceeding.

III. UNDISPUTED FACTS

9. As recorded in the information supplied by the petitioner and corroborated or not refuted by the State, on November 29, 1988, in response to a request by United International Pictures Ltda., the National Motion Picture Rating Board refused to allow the film "The Last Temptation of Christ," based on a book of the same name, to be shown in Chile. After this decision, the company resorted to an Administrative Court of Appeals that, on March 14, 1989, confirmed said rejection.

10. On November 11, 1996, in response to a new request by United International Pictures Ltda., the National Motion Picture Rating Board reclassified the movie, authorizing its showing to audiences over 18 years of age. In the opinion of the Board, there were new historical, cultural, and social factors of sufficient merit to revise its previous decision.

11. On November 12, 1997, based on Article 20 of the Political Constitution, seven attorneys, on their own behalf, on behalf of the person of Christ and the Catholic Church, filed a Motion for Protection with the Court of Appeals of Santiago against the decision of National Motion Picture Rating Board, arguing that its decision was arbitrary and illegal because it authorized a film to be shown that attacked the right to honor established in Article 19.4 of the Constitution for the person of Christ, living Christians, the Catholic Church, the appellants themselves, and the right to freedom of conscience guaranteed in Article 19.6 of the same Chilean Constitution.

12. The Council for Defense of the State, in defense of the National Motion Picture Rating Board, pointed out that administrative entities have the power to revise or revoke their decisions, in accordance with reasonable and opportune criteria, especially when such decisions are negative and that that cancelled by the Court of Appeals did not constitute *res judicata* inasmuch as it was not a jurisdictional ruling.

13. On January 20, 1997, the lower court decision accepted the appeal filed and rescinded the decision taken by the Rating Board on November 11, 1996, thereby "rendering the November 29, 1988 ruling, confirmed by the verdict of the appeals court, definitive." That finding was appealed before the Supreme Court, which, in its judgment of June 17, 1997, confirmed the sentence with a few modifications, thus definitively prohibiting showing of the film "The Last Temptation of Christ."

IV. COMPETENCE OF THE COMMISSION TO EXAMINE THE PETITION

14. The Commission has jurisdiction *prima facie* to examine the petition on the matter. The petitioner has *locus standi* in order to appear and has submitted a case concerning violation of norms established in the Convention by agents of a State Party to the Convention. The events alleged in the petition occurred when the obligation to respect and guarantee the rights established in the Convention was already in force for the Chilean State.[FN1]

[FN1] Chile ratified the Treaty and accepted the jurisdiction of the Court on August 21, 1990, with the reservation that it apply to events subsequent to March 11, 1990.

V. ADMISSIBILITY OF THE INSTANT CASE

1. Exhaustion of domestic remedies

15. According to the claimants, in this case the requirement of exhaustion of Domestic remedies has been met, in accordance with the provisions of Article 46 of the American Convention and Article 37 of the Regulations of the Commission; the Government of Chile has not filed objections in this regard.

2. Punctuality of the presentation

16. The Commission considers that the petition was presented within the period of 6 months established in Article 46(1)(b) of the American Convention.

3. Concurrence of legal actions

17. The Commission understands that the subject of the petition is not pending in another international proceeding for settlement, nor does it duplicate a petition already examined by this body or another international organization. Therefore, the requirements established in Articles 46(1)(c) and 47(d) are also satisfied.

4. Grounds of the petition

18. The Commission considers that, in principle, the petition refers to events that could constitute a violation of rights guaranteed in the American Convention. Inasmuch as the petition is not manifestly groundless or obviously out of order, the Commission considers the requirements of Article 47(c) satisfied.

VI. CONCLUSIONS

19. The Commission considers that it has jurisdiction to hear this case; and, that it is admissible according to the requirements established in Articles 46 and 47 of the American Convention.

Based on the arguments of fact and law stated above,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible.
2. To send this report to the State of Chile and to the petitioner.
3. To make itself available to the parties for the purpose of reaching a settlement based on respect for the rights protected in the American Convention and to invite the parties to go on record within a period of 30 days concerning the possibility of resolving the case amicably.

4. To continue analyzing the merits of the case.
5. To publish this finding and include it in the Annual Report to the General Assembly of the Organization of American States.

Done and signed by the Inter-American Commission on Human Rights, in the city of Caracas, Venezuela on the 5th 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.