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Title/Style of Cause: Hector Hugo Boleso v. Argentina
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, Claudio Grossman, Helio Bicudo,
Henry Forde.
Dated: 24 September 1998
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I. BACKGROUND

1. On May 6, 1997, Mr. Héctor Hugo Boleso (hereinafter "the petitioner") addressed the Inter-American Commission on Human Rights (hereinafter "the Commission") to denounce the Argentine Republic for having infringed the American Convention on Human Rights (hereinafter the "American Convention"), by violating, to his detriment, the right to judicial guarantees (Article 8).

II. CONTEXT

2. Mr. Héctor Hugo Boleso was a First Instance labor judge in the Province of Corrientes, and, in that capacity, he began amparo proceedings against the authorities of the Province of Corrientes for "altering the intangibility of his remuneration as a judge", a principle enshrined in the National Constitution. Seven years later, on August 4, 1997, the High Court of Justice of the Province of Corrientes adjudicated an exceptional federal review procedure and issued a definitive sentence in favor of the petitioner.

3. The Provincial Law that regulates the amparo as a summary proceedings establishes strict and short time limits. The Court of First Instance must pass sentence within three days and the High Court of Justice--as an appellate body--must do within the same period.

III. ALLEGED FACTS

4. Mr. Héctor Hugo Boleso filed a writ of amparo before the Court of First Instance against the authorities of the Province of Corrientes, based on the constitutional guarantee the

remuneration of judicial magistrates shall remain inviolable. On June 18, 1991, he was issued an unfavorable sentence.

5. On August 7, 1992, the High Court of Justice of the Province of Corrientes, upon reviewing the decision of the Court of First Instance, revoked said decision and pronounced a decision in favor of the petitioner. On August 28, 1992, the defendant, the authorities of the Province of Corrientes, filed an extraordinary federal appeal.

6. The Court has issued various rulings since the Authorities of the Province of Corrientes filed the above mentioned extraordinary appeal. These rulings include No. 3080, dated September 30, 1992, which declares the extraordinary federal appeal received; No. 2769, dated August 27, 1993, which orders that the Prosecutor of the High Court be informed; and the ruling of September 18, 1993, which, taking into account the fiscal report, calls for proceedings to be held in order to consider the admissibility of the above appeal.

7. The High Court of Justice took five years to issue a ruling regarding the admissibility of this appeal in spite of Mr. Hector Hugo Boleso's inquiries on the following dates: November 29, 1993; September 9, 1994; October 17, 1994; February 20, 1995; May 9, 1995; March 4, 1996; May 8, 1996; June 5, 1996; December 2, 1996 and April 13, 1997.

8. The ad-hoc High Court of Justice of the Province of Corrientes, through resolution No. 755 of August 4, 1997, decided not to grant the extraordinary appeal that had been filed by the Authorities of the Province of Corrientes and issued a definitive ruling in favor of the petitioner. The process for carrying out the ruling began immediately.

9. Mr. Boleso informed the Commission that as soon as the process for carrying out the ruling had begun, the Authorities of the Province of Corrientes appealed the settlement. This appeal was submitted eight years after the suit—which was based on a Constitutional right—had been initiated and after the payment schedule had already been prepared. The appeal was subsequently rejected by the presiding Appellate Chamber.

IV. PROCEEDINGS BEFORE THE COMMISSION

10. On May 6, 1997, the Commission received a petition from Mr. Héctor Hugo Boleso, to which additional information was added June 5, 1997. The petition raised an objection to the rule of the exhaustion of domestic resources. The case was declared open on July 15, 1997, at which time the relevant information was forwarded to the Argentine Authorities, who were given 90 days to submit a response. This period was extended for 30 days on two occasions--on October 21, 1997 and November 26, 1997--and the petitioner was so informed.

11. On July 29, 1997, the petitioner submitted additional information to the Commission that was then added to the case file of pertinent documents. On November 24, 1997, the Commission received information from the petitioner stating that the High Court of Justice had issued a ruling on August 4, 1997. The petitioner subsequently sent additional information, which was duly forwarded to the Argentine Government. On August 11, 1998, the Government responded to the Commission's requests for information.

V. POSITION OF THE PARTIES

A. The petitioner

12. The petitioner claims that the Argentine Government violated his right to due process according to the provisions of Article 8 of the American Convention as a result of the delay on the part of judicial authorities in issuing a decision. He adds that in spite of his inquiries, the High Court of Justice took more than five years to issue a decision regarding the admissibility of the appeal.

13. The petitioner stated that the claim was not due to "wage disparities" but was, rather, a petition for protection under the constitutional guarantee of the inviolability of the remuneration he receives as a magistrate, which is the guarantee of the independence of the judiciary in relation to the other branches of government, and that for that reason this guarantee should be considered--together with the guarantee of nontransferability--as a safeguard for the operations of the judiciary and as something demanded by society at large --not a personal privilege-- for the most appropriate administration of justice.[FN1] In this sense, the encumbrance of the right to property is a secondary issue arising from the violation of the guarantee of the inviolability of wages.

[FN1] The petitioner cites Rodríguez Aguilera, Cesárea. *El Poder Judicial en la Constitución*, cit. by Morello, Augusto M: *El Proceso Justo*, Librería Editora Platense, 1994, p. 426.

14. Moreover, he argues that the duration of the proceeding demonstrates noncompliance with the peremptory and abbreviated time periods established in Act 2.903; that he presented continual requests that proceedings in this case be expedited; and that the case, since March 11, 1998, has been in the execution-of-judgment phase before the Supreme Court of Justice, which hears appeals from the provincial government.

15. The petitioner argues that the case is not complex, and that the conduct of the officials involved should be found dilatory. Actually, the substantive issue in this case had already been settled by the Supreme Court of the nation in numerous decisions, in the sense that "the inviolability of the wages of judges is a guarantee of the independence of the judiciary, for which reason it should be considered, along with nontransferability, as a safeguard for the operations of a branch of government," and that the provincial government has recognized in Provincial Decree No. 1930, of July 15, 1998--not published in the Official Gazette--that "in no case has a verdict in favor of the provincial government been rendered."

B. The Argentine State

16 The State requests that the petition be declared inadmissible based on the following arguments:

17. The State claims that the American Convention, by using the broad term "reasonable" in Article 8, stipulates that the nature of the trials is a criteria for determining their ultimate duration. Because numerous factors exist which can affect the duration of a trial, merely measuring a trial by a set number of days, months or years does not constitute a violation of protected rights.[FN2]

[FN2] The State quotes the Inter-American Commission on Human Rights, Report 2/97, paragraph 18.

18. The State argues that Mr. Héctor Hugo Boleso's claim includes special circumstances that led to the extension of the trial, including the fact that the claimant is a Judge who is demanding payment of salary differences. This means that the magistrates who must try the case may become direct beneficiaries of their own decision. To remedy this situation it became necessary to appoint licensed attorneys as ad-hoc judges.

19. Furthermore, during the last half of the 1980's, the Argentine economy underwent an inflationary crisis which significantly affected economic, social and even political life. This process brought with it a decline in the nominal value of salaries and fixed compensation, which made it necessary to implement continual adjustments and realignments. This process was finalized with the approval of the Austral Convertibility Law (Ley de Convertibilidad Austral), Law No. 23.928, on April 1, 1990.

20. The State argues that Mr. Héctor Hugo Boleso's petition does not dispute any public or private measure or act adopted to his detriment but rather was directed at the end result of a general situation. Furthermore, the admissibility of the claim given the outcome of similar situations might have severely affected the Province's and even the Government's economic policy.

21. The State notes that Mr. Héctor Hugo Boleso received his remuneration in the usual fashion and under the same conditions as other magistrates in the province while the case was being considered and therefore was not prevented from exercising a protected right. The State adds that although nothing is stated in the petition concerning the provision protecting the right to property in Article 21 of the American Convention, the Argentine Government entered a reservation in this regard.

22. Lastly, the State claims that the petitioner has not demonstrated himself to have been the victim of an arbitrary exercise of public power and that if the claimant had sustained a loss by exercising a right, said loss has been fully redressed through judicial examination of the evidence. [FN3]

[FN3] The State quotes the Inter-American Court of Human Rights, Velásquez Rodríguez Case, Compensatory Damages, paragraphs 25 and 26.

VI. ADMISSIBILITY

23. The purpose of the Commission's judgements regarding the admissibility of the cases it hears is to produce a greater degree of clarity and legal certainty and to focus the parties on the central issues of the case.[FN4]

[FN4] See, among others, Inter-American Commission on Human Rights, Annual Report 1998, Report No. 49/97, Case No. 11.520 - Tomás Porfirio Rondín et al, "Masacre de Aguas Blancas" (Aguas Blancas Massacre) (Mexico), OAS/Ser/L/V/II.98, February 18, 1998, paragraph 50, page 8.

A. Exhaustion of domestic remedies, time period for instituting proceedings before the Commission, and other formal requirements

24. The Commission observes that in his initial petition to the Commission on May 6, 1997, the petitioner opposed the exception set forth in Article 46(2)(a) of the American Convention. During the course of the proceedings before the Commission, however, a final ruling was issued by the High Court of Appeals on August 4, 1997.

25. Consequently, the Commission believes that the recourses of domestic jurisdiction set forth in Article 46 of the American Convention were instituted and exhausted. The Commission concludes that the six month time limit requirement established in Article 46(1)(b) of the American Convention and other formal requirements set forth in the same document and in the Rules of Procedure of the Commission have been satisfied.

B. Characterization of violations of the American Convention

26. The Commission has expressed on other occasions that the right to a trial within a reasonable amount of time as established in the American Convention is based, among other reasons, on the need to avoid undue extensions which constitute an abridgement and a denial of justice to the detriment of people who claim that their rights under the Convention have been violated.[FN5]

[FN5] Inter-American Commission on Human Rights. Annual Report 1996, Report No. 9/97, Case 11.509, Decision on admissibility of March 12, 1997, pages 635-636, paragraph 35.

27. Article 8 of the American Convention establishes the right of all people to:

a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a

criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

28. Article 8 of the American Convention applies to cases in which the State is alleged to have violated the rights protected by said Convention and cases in which civil or other rights and obligations between individuals are determined to have been violated. Consequently, the Commission concludes that in the amparo proceedings initiated by the petitioner, the guarantees of due process established in Article 8(1) of the American Convention do apply.

29. Furthermore, with regard to the petitioner's claim that the trial was delayed, the Commission notes that the laws pertaining to amparo proceedings stipulate that rulings should be issued within very short time periods. Nevertheless, the Court of First Instance and the Court of Appeal took more than a year to issue their decisions. Likewise, the proceedings before the High Court of Justice of the Province of Corrientes took approximately five years. The Commission observes that the Argentine judicial authorities took approximately 7 years to issue a definitive ruling on the case. This ruling has not been carried out since March 11, 1998 to this moment.

30. In consideration of the delays that occurred in connection with the hearing of this case by the Argentine courts, the Commission believes that the facts put forth by the petitioner may constitute a violation of the right to due process (Article 8), to effective recourse (Article 25) and to respect (Article 1.1) of the American Convention. The Commission concludes that the requirement established in Article 47(b) of the American Convention has been satisfied.

VII. CONCLUSIONS

31. The Commission concludes that it has jurisdiction to hear the case in question and that the case is admissible in accordance with the requirements set forth in Articles 46 and 47 of the American Convention.

32. In light of the preceding arguments of fact and of law and without prejudice on the merits,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present case admissible.
2. To notify the parties of this decision.
3. To continue to analyze the fundamental issues.
4. To put itself at the parties' disposal for the purpose of reaching a friendly settlement based on respect for the rights enshrined in the American Convention and to invite the parties to respond to this possibility within two months.
5. To publish this report and include it in its Annual Report to the General Assembly of the OAS.

Approved by the Inter-American Commission on Human Rights in the city of Washington, D.C., on the 24th day of the month of September 1998. (Signed): Carlos Ayala Corao, Chairman; Robert K. Goldman, Vice Chairman; Jean Joseph Exume, Second Vice Chairman; Commissioners Alvaro Tirado Mejia, Claudio Grossman, Hélio Bicudo and Henry Forde