

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 81/98; Case 11.298
Session: Hundredth Regular Session (24 September – 13 October 1998)
Title/Style of Cause: Reinaldo Figueredo Planchart v. Venezuela
Doc. Type: Decision
Decided by: Second Vice Chairman: Jean Joseph Exume.
Commissioners: Alvaro Tirado Mejia, Claudio Grossman, Helio Bicudo, Henry Forde.
In compliance with article 19(2)(a) of the Commission's Regulations, the Chairman of the Commission, Dr. Carlos Ayala, a Venezuelan, did not participate in the discussion and vote on the present report. The First Vice Chairman, Dr. Robert K. Goldman, also refrained from participating.

Dated: 28 September 1998
Citation: Figueredo v. Venezuela, Case 11.298, Inter-Am. C.H.R., Report No. 81/98, OEA/Ser.L/V/II.102, doc. 6 rev. (1998)

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I. SUMMARY OF THE CASE

1. The complaint alleged a violation by the Venezuelan Government of the rights protected by the Convention of Mr. Reinaldo Figueredo Planchart in the investigation of charges against him, and his prosecution, for the crimes of misappropriation and embezzlement of funds. The violations charged are of Articles 5(1), 2 and 4), and 8(1), 2(b), 2(d), 2.(f), 2(h) and 5, 24 and 25 of the Convention. The Commission was asked to suspend, as a precautionary measure, execution of the warrant issued for the arrest of Mr. Figueredo, and, in the event of his conviction, to suspend his extradition and incarceration until the Commission decided on the merits of the case. The Government moved for dismissal on the grounds that the domestic remedies had not yet been exhausted. The Commission disallowed that motion and pronounced the case admissible.

II. PROCESSING BY THE COMMISSION

2. On May 23, 1994, the Inter-American Commission on Human Rights (hereinafter "the Commission") received a petition alleging violation by the Republic of Venezuela (hereinafter "the Government," "the Venezuelan Government" or "Venezuela") of the rights of Mr. Reinaldo Figueredo Planchart protected in the American Convention on Human Rights (hereinafter "the Convention").

3. The Government's reply was received on August 12, 1994. On October 4, 1994 a questionnaire was sent to the parties with a request that it be filled out. The replies from

petitioner and the Government were received on December 16, 1994, and January 2, 1995, respectively. Additional information arrived from the petitioner on August 26, 1995. The Commission received the observations from the Government on November 22, 1995. On January 18, 1996, the petitioner presented to the Commission a contingent request for Precautionary Measures. On August 1, 1996, a reply to the Government's remarks and a complementary complaint were received from the petitioner. The Commission received additional information from the Government on February 6, 1997, and from petitioner on April 20, 1997, and April 20, 1998.

III. THE POSITIONS OF THE PARTIES

A. Petitioner's position

4. The complaint asserts that the Venezuelan Government has violated rights of Reinaldo Figueredo Planchart that are protected by the Convention. The Supreme Court of Justice ordered Mr. Figueredo arrested for trial on a charge of misappropriation of funds and embezzlement while he was Minister of the Presidential Secretariat and Minister of Foreign Affairs.

5. It is alleged that in the course of that proceeding his right of defense was violated by the Office of the Comptroller General of the Republic of Venezuela. That Office conducted a "documentary investigation" into the use made of budgetary funds assigned to expenditures for Government security in 1989 and concluded that there was evidence of commission of the crimes of misappropriation and embezzlement. The report named Mr. Figueredo as one of the presumed culprits. That document was the basis of a summary proceeding before a tribunal.

6. It is complained that the Office of the Comptroller General did not advise Mr. Figueredo that he was being investigated, did not inform him of the evidence being used against him, gave him no opportunity to defend himself or to present evidence, and refused him a copy of the report incriminating him though it had sent it to the Attorney General and to a court, and did not reply to his request for the opening of an "administrative inquiry" into the charge against him in accordance with due process.

7. The complaint states that the Attorney General violated Mr. Figueredo's right of defense by summoning him informally, arraigning him on criminal charges before the Supreme Court of Justice on the primary basis of the Comptroller General's report without letting him know the evidence on which it was based or giving him an opportunity to contradict it, and denying him access to the text of the charge and of the Comptroller General's report on which the action was based.

8. It is complained that the Supreme Court of Venezuela violated Mr. Figueredo's right of defense, of appeal, and not to be subjected to cruel and inhuman treatment

9. The Supreme Court declared that there were sufficient grounds to try then Deputy Figueredo based on the constitutional provisions for the criminal indictment of certain public officials (the President of the Republic, Senators and Deputies). The petitioner states that, on the strength of this ruling of the Court, Mr. Figueredo was not permitted to know the evidence

against him or to defend himself; that in its decision, based on the report of the Comptroller General's Office, the Court had ruled that there was evidence of commission of the crimes of misappropriation and embezzlement--but did not specify what that evidence was or the crimes for which he was to be tried. The result of the Court's decision was that Mr. Figueredo was brought to trial, stripped of his parliamentary immunity and removed from his position as a Deputy to the Nation's Congress.

10. The Supreme Court decided to try Mr. Figueredo (along with President Carlos Andrés Pérez and Senator Alejandro Izaguirre) directly, in a proceeding which rules out appeals. Once the proceeding was under way, the Court denied Mr. Figueredo access to the evidence against him, as well as the right to present evidence and enter pleas, and to take any action in his own defense. That summary phase ended with the issuance of an order for his arrest without bail.

11. The Court took his testimony in a secret hearing: the only persons present were the representatives of the prosecuting attorney and officers of the Court itself. His lawyer was not allowed to be present. The Court did not permit the defendants to appoint an attorney or defender, or do anything to state their case to the Court, to submit evidence or to present any request until the warrants for their arrest had been issued. The petitioner notes the Court's pronouncement that until that happened, they could not be regarded as on trial, even though they had each been indicted, individually and by name, by order of the Court itself.

12. A year after the opening of the trial the Court ruled that the commission of crimes of misappropriation and embezzlement had been proven and that there was well-founded evidence of the guilt of the accused. It ordered that he be held in custody until and during the actual trial. The petitioner claimed that "there is no charge or evidence to cast the slightest doubt on my personal honesty and integrity."

13. In addition, the petitioner alleges that under the law and the jurisprudence of the Court release on bail can never be granted to any person on trial for crimes under the Law on Protection of Public Assets, which meant that he would remain in confinement for the duration of the trial. He also described the dangerous conditions prevailing in Venezuelan prisons.

14. The petitioner charges that the Supreme Court violated his right of defense in not permitting him to know what he was accused of or on what evidence, in not permitting him to appoint a defender or attorney, or to act, present evidence or pleadings or make petitions at any stage of the proceeding that prompted the warrant for his arrest, and in subjecting him to interrogation without the presence of defending counsel or of any impartial third party.

15. Against the Government's assertion that the charge and its supporting documents had been delivered to him between the preliminary proceedings and the investigation, the petitioner maintains that "at that time the documents were delivered to former President Pérez, but not to Mr. Figueredo, who had no access to those documents until a year later, after the investigation."

16. The petitioner complains of violation of his right to appeal the judgments handed down against him and "the order that he be subjected to inhumane punishment without even having

been sentenced by ordering his arrest without bail at grave danger to his physical and moral integrity."

17. In his complementary accusation the petitioner alleges that the Court's independence "may reasonably be supposed to be questionable."

18. It is alleged that the Political and Administrative Chamber of Venezuela's Supreme Court violated the petitioner's right to due process.

19. Having found it impossible to defend himself against the imputations against him in the report of the Office of the Comptroller General, on November 10, 1993, the petitioner, acting through his agent, filed a motion for nullification of that report with the Political and Administrative Chamber of the Supreme Court. At this writing the Chamber has not ruled on the question even though the procedural deadline for doing so has run out and despite the effect that such a ruling would have on the trial itself. On that occasion he filed an appeal for protection ("amparo") of the constitutional rights violated by that report. Nine months after it was filed, the appeal for "amparo" was disallowed.

20. The petitioner complains that in the court proceedings the judges of that Chamber participated in the decision to order his arrest and failed to pass on the appeals filed. Petitioner also charges unwarranted delay and denial of justice.

21. In consequence, petitioner has asked the Commission to investigate the violation by the Government of Venezuela of his rights under Article 5(1, 2 and 4) and 8[1, 2(b), 2(d), 2(f), 2(h) and 5], 24 and 25 of the Convention. He calls on the Commission "to order, as an urgent precautionary measure, suspension of execution of the warrant for my arrest in order to avert irreparable injury to my physical and moral integrity and to allow me to come forward at liberty, subject to due assurances and guarantees, to exercise my right of defense in the proceedings against me, and to advise the Government of Venezuela accordingly."

22. At the same time, he has asked the Commission to appeal urgently to the Inter-American Court of Human Rights order as a precautionary measure "suspension of execution of the warrant for his (my) arrest in order to avert irreparable injury to his (my) physical and moral integrity and to allow him (me) to come forward at liberty, subject to due assurances and guarantees, to exercise his (my) right of defense in the proceedings against me, and notify the Government of Venezuela accordingly."

23. Subsequent to his original complaint, the petitioner filed with the Commission a Contingent Request for Precautionary Measures in which he requested that, "in the event that the Supreme Court of Venezuela finds him guilty in the criminal proceeding to which the present petition relates, to pass a resolution recommending ad interim precautionary measures."

24. In that eventuality the precautionary measure requested is as follows:

A resolution in which the Commission recommends that, if Mr. Figueredo is found guilty by the Supreme Court of Venezuela in the criminal proceeding to which this petition relates, his

sentence of extradition or imprisonment not be carried out until the Commission has resolved the serious issues of violations of due process in this case now pending before the Commission.

25. In his complementary complaint the petitioner also asks the Commission "to recommend that Mr. Figueredo be compensated for the damages caused by violation of his rights, including--but not limited to--loss of employment since the opening of the investigation; to recommend that Venezuela reform its laws and procedures to guard against a recurrence of such violations, including--but not limited to--assurance that the right of defense applies as much in the preliminary proceedings as in the trial...."

B. The Government's position

26. The Government alleges that the complaint is inadmissible because the remedies under domestic jurisdiction have not yet been exhausted.

27. The Government states that petitioner was not informed of the charge against him because "it cannot be concluded that the accused must in every case be provided with a copy of the charge or of its appended documentation."

28. The prosecutor asserts that delivery of a complete copy of the complaint is compulsory only in proceedings to determine responsibility for crimes not punishable by death, personal restraint or penal servitude. "It must be remembered that in this case the accused was charged with the crimes of misappropriation and embezzlement, for which the Organic Law on Protection of Public Assets imposes personal restraint or imprisonment."

29. The Government's position is that "the action instituted against Citizen Reynaldo Figueredo Planchart is proceeding in strict compliance with the legal order enshrined in the Constitution and the laws of the Republic."

30. The guarantees set forth in Article 8 of the Convention are not applicable to the proceeding known as "a preliminary hearing on the merits," which is neither a trial nor "a proceeding to determine responsibility of any kind," but rather to produce a ruling on whether a trial should follow. "To give those judicial guarantees effect in the preliminary hearing would vitiate it and turn it into something else."

31. The proceeding followed in the present case was not an "administrative inquiry" but a "judicial review," the aim of which is not to punish but to acquire information from which a punitive proceeding might emerge."

The case of Mr. Figueredo is one of involvement by association, owing to the close connection with the case brought against former President of the Republic Carlos Andrés Pérez. Because of this particular situation, the fact that the case is being tried before the highest bench of the Republic is a constitutionally established functional prerogative that serves as a guarantee deriving specifically from the need to protect the majesty of the office of President of the Republic and the incumbent in that august position at the start of the trial. This guarantee is recognized and established in many constitutional systems which, even though it may give rise to

criminal proceedings that are not subject to appeal, have nevertheless not in international justice been deemed to violate human rights even in cases of the trial by association of officials of lower rank than those protected by this prerogative, such as that of Mr. Reinaldo Figueredo Planchart today.

32. The Government alleges that Mr. Figueredo voted without demurral for the lifting of his parliamentary immunity; that he was given in good time information on the charge against him so that he could use it in his defense in the "trial," in the current proceeding against him before the Supreme Court of Justice; that the charge was delivered to him along with its supporting documents after the preliminary hearing, and before the opening of the investigation; that "as an additional guarantee for the accused, he is not being tried by a one-judge court or a chamber, but by the entire bench – all fifteen members of the Supreme Tribunal of the Republic."

33. The Government states that the preliminary hearing on merits is not a proceeding to determine responsibility, but an event incidental to the trial on the substance of the charge.

It is, of course, a single-court trial, but as such is exactly the same as the single-court trial to which the Venezuelan Government could be subjected if the Inter-American Commission on Human Rights were to decide to bring action against it before the Inter-American Court of Human Rights... The hearing on merits does not determine responsibility, but merely actionability, and is hence incidental to the trial on the substance of the charge. And it is evident and manifest that in the trial of the complainant there have been no procedural delays, that is, no obvious denial of justice, and it is also clear that his lawyers are active participants in the proceedings...

34. The Government asks the Commission to disallow the complaint.

The Government requests that the complaint presented be disallowed on the grounds that a) domestic remedies have not been exhausted; b) the complaint relates to the enjoyment of a privilege of public office, not to any abridgement of a civil right such as that of defense, which in any case is guaranteed and being fully exercised by him at present before the Supreme Court of Justice; c) the assertion that the prosecution's charge and its supporting documents were not delivered to him in time for use in his defense is false; d) the dubiousness of his statement that the purpose of the preliminary hearing on merits was to arbitrarily divest him of his parliamentary status, when it has been shown that his immunity was lifted with his own affirmative vote, and that he was then removed by majority vote from the Chamber of Deputies in light of the findings of the Supreme Court so that he could be called to account for alleged criminal acts based on the principle of accountability by which citizens and Government officials are bound; e) his manifest distortion of the procedural aspects of his trial in deliberately confusing the preliminary stages of the trial (in which defense is not yet called for) with those parts of the proceeding devoted to controversy in which he may bring such arguments and evidence as he deems necessary in defense of his interests; and finally, f) the unquestionable fact that his lawyers are now acting in full diligence and publicity, without obstacles of any kind, in a trial that, having proceeded with all speed and procedural rigor, has now reached the stage when judgment is pronounced.

35. On February 6, 1997, the Commission received from the Government a note announcing that on May 30, 1996, "the Supreme Court of Justice of Venezuela, sitting in plenary, found citizen Reinaldo Figueredo Planchart guilty of the crime of aggravated generic misappropriation..." Mr. Figueredo (who was tried in absentia) "was prosecuted for the crimes of aggravated embezzlement and misappropriation, the trial culminating in the stated verdict, and there are no other remedies of internal jurisdiction to be interposed against that decision, because it was handed down by the High Tribunal as provided in Article 211 of the Venezuelan Constitution." (Emphasis added)

IV. COMPETENCE OF THE COMMISSION TO CONSIDER THE PETITION

36. The Commission is prima facie competent to consider the petition in question. The petitioner may legitimately appear, and has presented grievances as to compliance by agents of a State Party with the provisions of the Convention. The events alleged in the petition are said to have taken place when the obligation to respect and enforce the rights established in the Convention was already in effect for the Venezuelan Government.[FN1] In addition, the Government had already accepted the jurisdiction of the Inter-American Court of Human Rights.[FN2]

[FN1] Venezuela ratified the American Convention on Human rights on August 9, 1977.

[FN2] Venezuela had accepted the jurisdiction of the Inter-American Court of Human Rights on June 24, 1981.

V. ADMISSIBILITY

A. Exhaustion of domestic remedies

37. The petitioner asserts that on November 10, 1993, he presented to the Political and Administrative Chamber of the Supreme Court an action for dismissal of the report of the Comptroller General's Office, and that no decision has yet been taken on the matter. On the same occasion he introduced a motion for "amparo" to protect his constitutional rights violated by that report. Nine months later, his request was declared without merit.

38. The complainant also notes that the fact that the Supreme Court is the body charged with constitutional and legal supervision of the acts of the Office of the Comptroller General of the Republic and of the Attorney General of the Republic has constituted "the most serious obstacle to the carrying out of other steps." He adds that "the Court has not only admitted those acts but has ratified and even added to them as well."

39. The Government has objected that domestic remedies have not yet been exhausted in the present case. Nevertheless, in view of the unwarranted delay in ruling on the appeals filed and taking into account the circumstances alleged by petitioner, the Commission considers that the requirement of exhaustion of domestic remedies established in Article 48 of the Convention has been met.

40. It may also be noted that on February 6, 1997, the Commission received a note from the Government in which it announced that, as a result of the guilty verdict pronounced against Mr. Figueredo by the Venezuelan Supreme Court of Justice, there remain no further remedies of domestic jurisdiction to be interposed against that decision.

B. Timeliness of the presentation

41. The Commission considers that the petition was presented within the allotted term of six months, as established in Article 46(1)(b) of the American Convention.

C. Status of proceedings

42. It is the understanding of the Commission that the matter of the petition is not the subject of any other proceeding for international settlement, and is not substantially the same as a petition previously studied by this or any other international organization. Consequently, the requirements of Articles 46(1)(c) and 47(1)(d) have also been met.

D. Grounds of the petition

43. The Commission considers that, in principle, the petitioner's statement relates to events that tend to establish a violation of rights guaranteed by the American Convention. The Commission is of the view that the requirements of Article 47(b) and (c) of the Convention have been met.

VI. CONCLUSIONS

44. The Commission concludes that it is competent to consider the present case which is admissible in the terms of the requirements of Articles 46 and 47 of the American Convention.

45. Based on the foregoing arguments of fact and law,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present case admissible.
2. To notify the Venezuelan Government and the petitioner of this decision.
3. To continue its examination of the merits of the case.
4. 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 regarding this possibility within 2 months.
5. To publish this report and include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C., on the twenty-eighth day of September 1998. (Signed) Jean Joseph

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Exumé, Second Vice Chairman, Alvaro Tirado Mejía, Claudio Grossman, Hélio Bicudo and Henry Forde, Commissioners.