

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 82/98; Case 11.703
Session:	Hundredth Regular Session (24 September – 13 October 1998)
Title/Style of Cause:	Gustavo A. Gomez Lopez v. Venezuela
Doc. Type:	Decision
Decided by:	First Vice Chairman: Robert K. Goldman; 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, Commission Chairman Dr. Carlos Ayala, a Venezuelan national, did not participate in discussing and voting on this report.
Dated:	28 September 1998
Citation:	Gomez v. Venezuela, Case 11.703, Inter-Am. C.H.R., Report No. 82/98, OEA/Ser.L/V/II.102, doc. 6 rev. (1998)
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I. PROCEEDINGS BEFORE THE COMMISSION

1. On 27 November 1996, the Inter-American Commission on Human Rights (hereinafter "the Commission") received a complaint alleging a violation of rights protected by the American Convention on Human Rights (hereinafter "the Convention") by the Republic of Venezuela (hereinafter "the State") to the detriment of Mr. Gustavo A. Gómez López.

2. On 5 December 1996, the State was formally requested to provide information on the petitioner's allegations. On 9 December 1996 and 14 July 1997, the petitioner submitted additional information. The State gave its reply on 25 August 1997. On 24 November 1997, the Commission received the petitioner's comments and, on 21 April 1998, the Commission received the State's conclusions.

3. Based on its analysis of the requirements for admissibility, the Commission has decided to declare this case inadmissible.

II. POSITIONS OF THE PARTIES

A. The Petitioner

4. The petitioner claims that the criminal charges he faces in Venezuela arise from the State's attempts to blame him for the collapse of that country's banking system. Mr. Gómez was the Chairman of the Board of Banco Latino, a bank in the administration of which the

government intervened. Following that intervention, arrest warrants for several individuals were issued, including Mr. Gómez. The offenses with which Mr. Gómez is charged are considered by Venezuelan law to be "crimes against the public patrimony," for which bail cannot be granted.

5. The petitioner alleges that the State has violated several of the rights enshrined in the Convention: the retroactive enforcement of new banking laws criminalizing actions that "prior to the enactment of the laws . . . were totally legal"; the creation of special banking tribunals on an ex post facto basis, after the charges against him had been made, for hearing his case and other related ones; and a "public campaign of poisonous rumors intended to discredit [him] in the eyes of the entire Venezuelan people with false and highly inflammatory accusations."

6. The petitioner claims that the Government has refused him the possibility of an impartial trial by submitting him to "personalized, direct, and persistent persecution for political reasons." He states that "the manipulation and control of the courts by the Government deprives [him] of the right to effective recourse for the violations of [his] human rights." He insists that the charges against him are false, "politically motivated and highly offensive," and that he has not been given a fair and reasonable opportunity to refute them.

7. The petitioner maintains that the Venezuelan judiciary is neither independent nor impartial, and that the Venezuelan courts are highly politicized, corrupt, and controlled by the executive and legislative branches of government. This is particularly true in his case, with charges made "as part of an extensive hate campaign." He stresses that "there is no possibility for an impartial trial within such a system":

It would be difficult for any person accused of a crime to receive an impartial trial within such a judicial system. But in my case, an impartial trial is impossible. That is because, as I shall now demonstrate, the government has treated me in a particularly unfair way, acting to manipulate and control Venezuela's decrepit legal system to ensure a conviction in the following fashion: (1) by creating special banking tribunals that are biased against me, (2) by inciting Venezuela's public opinion and judges against me through a perverse press campaign, and (3) by initiating highly selective proceedings against my colleagues and me in reprisal for our ties to the Caldera administration's political adversaries and our support for them.[FN2]

[FN2] Petitioner's complaint of 26 November 1996, p. 17, paragraph 38.

8. The petitioner alleges that the Government deprived him of the right to be represented by counsel of his own choosing, the right to prepare an adequate defense against the charges made against him, and the "right to seek recourse in the Venezuelan courts against the illegal embargo placed on his property, by specifically instructing its consulates abroad to refuse to authenticate [a power of attorney in his name]."

9. The petitioner notes that he is afraid of being sent to one of Venezuela's jails because of their subhuman conditions.

10. He accuses the Government of placing an embargo on his property and his wife's "in an arbitrary and inadequate way, and without compensation," since they were shareholders in the bank. He also claims he has been refused access to his deposits at the bank. In his supplementary complaint, the petitioner states that the Government has taken reprisals against his wife, Claudia Febres Cordero, by bringing extradition proceedings against her without due procedural guarantees and by denying her the right to counsel, to defend herself, and to appeal.

11. The petitioner has therefore asked the Commission to declare the State in violation of the Convention's Article 1 (failure to protect human rights), Article 5, paragraphs 1 to 4 (the right to fair and humane treatment), Article 7, paragraph 3 (freedom from arbitrary arrest), Article 7, paragraph 5 (the right to personal liberty and an immediate trial), Article 8, paragraph 1 (the right to an impartial trial before a pre-existing court), Article 8, paragraph 2 (the right to legal advice and to prepare a defense), Article 21 (the right to property), and Article 25 (the right to recourse for rights violations).

B. The State

12. The State maintains that domestic remedies have not been exhausted in this case and, consequently, the petition must be declared inadmissible; that the remedy of amparo has not been used in connection with the alleged violations; that amparo is adequate and effective for protecting the rights that have allegedly been violated; and that amparo action can be brought by Mr. Gómez or by any person acting on his behalf. In addition to amparo, at the First Court Mr. Gómez has had access to every administrative and procedural remedy available and "he has used them effectively, properly, and at the correct time."

13. The State claims that Mr. Gómez "is being tried in accordance with due legal process; that he has faced no legal impediment to his exhaustion of the legal remedies that exist and are applicable; and that there is no unwarranted delay in the decisions."

14. The State affirms that the petitioner has enjoyed the rights afforded by law, that he has been treated fairly, and that he has been duly represented by counsel of his own choosing, who have invoked "the recourses they have deemed fit and have had time enough to prepare his defense."

15. The State notes that the petitioner's lawyers, being in possession of a general power of attorney to represent him, have been in a perfect position for bringing amparo constitutional relief in his favor, were they to believe his fundamental rights had been threatened or violated. Neither the complainant nor his lawyers have filed an amparo constitutional relief suit before the domestic courts to protect against the violation or threatened violation of a basic right.

The Inter-American Commission on Human Rights is merely a subsidiary mechanism of the international laws that protect human rights; thus, claims that could be resolved by the domestic courts should be kept from being heard under international law. Consequently, while there is a possibility of their being adequately satisfied in accordance with the domestic law of a State, such claims cannot be considered violations of international human rights law.[FN3]

[FN3] State's reply of 25 August 1997, p. 9.

16. Irrespective of the alleged inadmissibility, the State addresses the substance of the complaint, maintaining that there has been no political persecution of Mr. Gómez and that the criminal courts hearing the petitioner's case were created, in accordance with the law, before the actions with which Mr. Gómez is charged: "those tribunals have always been competent to hear cases of banking crimes; however, as a result of the financial crisis faced by Venezuela, this jurisdiction was taken away from one group of tribunals and concentrated in a small number of tribunals that already existed and that had jurisdiction over such cases, in an attempt to ensure an improved and more effective examination of the facts."

17. The State maintains that allegations of impartiality on the part of a judge or court require reliable evidence to be submitted, and that the rights of Mrs. Claudia Febres have not been violated.

18. The State has invoked the petitioner's failure to exhaust the domestic remedies provided for in Venezuelan law as a reason for inadmissibility. Since the State has made this objection, the Commission will analyze the aforesaid requirement for admissibility.

III. THE COMMISSION'S COMPETENCE FOR EXAMINING THE PETITION

19. The Commission has *prima facie* competence for examining this petition. The petitioner has a legal right to appear[FN4] and he has alleged that rules set forth in the Convention have been affronted by the agents of a state party. The incidents described in the petition apparently took place when the obligation of respecting and ensuring the rights enshrined in the Convention was already in force for the State[FN5] and, moreover, when the State had already accepted the jurisdiction of the Inter-American Court of Human Rights.[FN6]

[FN4] It should be noted that the petition refers to alleged violations of Mr. Gómez's rights during the criminal proceedings brought against him for criminal acts that he is accused of committing during his time as the head of Banco Latino. The criminal liability is individual in nature and refers to actions with which an individual is charged. In spite of the constant references made by the parties to the government's intervention of Banco Latino, the Commission understands that the petitioner is appearing before it as an individual facing criminal charges, and not as the representative of Banco Latino, a corporate body. This distinction is relevant because the Commission has ruled that its jurisdiction covers alleged violations of the rights of individuals, but not those of corporations or similar conventional bodies. See the Commission's statements in this regard in Report N° 10/91, Case 10.169 (Peru), 22 February 1991.

[FN5] Venezuela ratified the American Convention on Human Rights on 9 August 1977.

[FN6] Venezuela accepted the jurisdiction of the Inter-American Court of Human Rights on 24 June 1981.

IV. ADMISSIBILITY

A. Exhaustion of Domestic Remedies

20. In regard to the alleged failure to exhaust domestic remedies, the Commission notes that "where a State claims that a petitioner has failed to discharge the requirement of exhaustion, the former bears the burden of indicating the specific remedies which remain available and effective." [FN7] Accordingly, the State pointed out that amparo was a timely and appropriate recourse for protecting rights from possible violations.

[FN7] IACHR, Case of María Eugenia Morales de Sierra, Report on Admissibility N° 28/98, Case 11.625 (Guatemala), published in IACHR Annual Report, 1997, paragraph 28.

21. From the parties' positions, it can be seen that the petitioner has not even attempted to exercise the domestic remedies offered by Venezuelan law. Given the subsidiary nature of international law, the petitioner must first use the remedies offered by the domestic system for resolving the alleged irregularities in proceedings. He must appear before the State so that the State can decide on the disputed point. Article 46(2) of the American Convention provides for three exceptions to this principle. Nevertheless, the Commission does not find that those exceptions are applicable in the case at hand. Venezuelan legislation provides amparo relief for protecting the rights protected by the Convention. In no way has it been shown that the petitioner was denied access to this remedy or was prevented from exhausting it, given that he did not even attempt to invoke it. Furthermore, neither can an unwarranted delay in deciding on the remedy be argued, since it was never invoked.

22. The Commission notes that the decisive point is not the subjective fear of the interested party regarding the impartiality of the court that is to hear the case, but rather whether the circumstances indicate that his fears can be objectively justified. In this regard, the European Court has stated that "in principle, the personal impartiality of the members of a tribunal must be presumed until there is proof to the contrary." [FN8]

[FN8] European Court of Human Rights, *Albert and Le Compte vs. Belgium*, 10 February 1983, Series A, No. 58, Application Nos. 7299/75 & 7496/76, (1983) 5 EHRR 533, & 32.

23. The Commission cannot conclude that the court's decisions will be made in a way that is biased and violates due process. The future determinations of a court cannot serve as evidence of any violation of the right to judicial guarantees enshrined in the American Convention.

24. In light of all the foregoing points, the Commission accepts the State's argument that domestic remedies have not been exhausted.

V. CONCLUSIONS

25. The Commission believes it is competent to hear this case; however, it holds that the case is inadmissible in that it fails to comply the requirements for admissibility set forth in Article 46(1).a of the Convention as regards the exhaustion of domestic remedies.

26. Based on the above arguments of fact and law, and in consideration of Article 47(a) of the Convention,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the case at hand inadmissible.
2. To send this report to the State and to the petitioner.
3. To publish this report and include it in its Annual Report to the OAS General Assembly.

Given and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C., on 28 September 1998. (Signed): Robert K. Goldman, First Vice-Chairman; Jean Joseph Exumé, Second Vice-Chairman; Commissioners Alvaro Tirado Mejía, Claudio Grossman, Hélio Bicudo, and Henry Forde.