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File Number(s):	Report No. 87/98; Case 11.216
Session:	Hundredth Regular Session (24 September – 13 October 1998)
Title/Style of Cause:	Oscar Vila-Masot 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. The Chair of the Commission, Dr. Carlos Ayala, a Venezuelan national, did not participate in this discussion and vote on this report, pursuant to Article 19(2) of the Regulations of the Commission.
Dated:	12 October 1998
Citation:	Vila-Masot v. Venezuela, Case 11.216, Inter-Am. C.H.R., Report No. 87/98, OEA/Ser.L/V/II.102, doc. 6 rev. (1998)
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## I. SUMMARY

1. Mr. Oscar Vila-Masot is accused of diverse crimes related to the fraudulent bankruptcy of the Hotel El Doral, a company he managed in Venezuela. As a result of these criminal charges, separate warrants were issued for his arrest. Mr. Vila-Masot filed a suit for legal protection (*acción de amparo*), which was first accepted and then revoked by the Supreme Court of Justice. He subsequently filed an appeal for revocation of the arrest, which was denied. The criminal proceedings are currently in the preliminary investigation phase, and the warrants are currently in force.

2. The original complaint against the Venezuelan State was filed by José Gregorio López and Ruth Elena Moreno de López and by Oscar Vila-Masot in his capacity as assistant counsel. Mr. Oscar Vila-Masot then filed a complaint against the Venezuelan State for violating the following rights protected by the Convention: the right to a fair trial (Article 8) and to prompt and effective recourse (Article 25) with regard to the habitual violation of the State's duty to respect and guarantee rights (Article 1(1)). He further alleged the violation of the following articles of the Convention: Article 5(1) when being questioned after his arrest; 21(1) and 21(2) for freezing his current accounts; and 22(2) for prohibiting him from leaving the country. He further denounced the violation of Article XXV of the American Declaration of the Rights and Duties of Man and 7(3) and 7(7) of the Convention, which guarantee that no one shall be deprived of his or her liberty for non-fulfillment of clearly civil obligations or for commercial debt.

3. The State claimed the exceptions to admissibility contained in Article 47 of the Convention and requested that the Commission declare itself incompetent to enforce the rules set forth in the American Declaration of the Rights and Duties of Man.

4. The Commission did not accept the exception on the failure to exhaust remedies under domestic law. However, it did grant the exception contained in Article 47(b) of the Convention and therefore declared the present case inadmissible. Furthermore, the Commission deemed itself competent to enforce all rules relating to the inter-American human rights system, of which the American Declaration of the Rights and Duties of Man is part. The Declaration, in addition, is a mandatory rule of *ius cogens* or international customary law.

## II. FACTS

5. Mr. Oscar Vila-Masot is accused of diverse crimes related to the fraudulent bankruptcy of the Hotel El Doral, a company he managed in Venezuela. As a result of these criminal charges, separate warrants were issued for his arrest. Mr. Vila-Masot filed a suit for legal protection, which was first accepted and then revoked by the Supreme Court of Justice. He then filed an appeal for revocation of the warrants, which was denied. The preliminary investigation in the criminal proceedings, which names Oscar Vila-Masot as the alleged suspect, is in the preliminary phase, and to date the Court has not issued any decision.

6. The Eighth Criminal Court of First Instance of the Judicial District of the Federal District and the State of Miranda ordered the judicial detention of Oscar Vila-Masot for alleged fraud and aggravated misappropriation. That warrant remains in force. Likewise, the 37th Criminal Court of First Instance of the Judicial District of the Federal District and the State of Miranda, for the purpose of conducting a preliminary investigation, ordered the judicial detention of Oscar Vila-Masot for alleged fraudulent use of public funds, fraud, and aggravated misappropriation, which are crimes classified in the Organic Law to Protect Public Property. The proceedings provided for in the aforementioned statute are currently under way, with a view to pursuing due process through a trial in absentia.

7. The petitioner disagrees with the decision of the Supreme Court of Justice to revoke his suit for legal protection (*acción de amparo*). In essence that decision states the following:

This Court considers that although the basic purpose of the Organic Law to Protect Constitutional Rights and Guarantees is to protect the enjoyment and exercise of the rights enshrined in the Constitution for natural or juridical persons, those persons cannot force regular or special proceedings. Therefore, in different decisions of each of its six divisions, the Court has been establishing the doctrine that a suit for legal protection (*acción de amparo*) is unfounded when there are suitable procedural measures that make it possible to obtain the same results as through the requested protection [...] The arrest warrant for Oscar Vila-Masot, a Venezuelan citizen, has not been executed; therefore, in the present case the ordinary appeal procedure is still pending, and the person filing the suit for legal protection can achieve the same results through that channel as those sought through this request.[FN2]

The petitioner alleges that this position of the Supreme Court violates Article XVIII of the American Declaration of the Rights and Duties of Man and Article 25(1) and (2), and Article 29(a) and (b) of the Convention.

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[FN2] See p. 22 of the judgment of the Criminal Court of Cassation of the Supreme Court of Justice dated December 8, 1993, which overturned the judgment of the Higher Court to Protect Public Property dated August 13, 1993, which had allowed the action for constitutional protection brought by Oscar Vila-Masot.  
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8. On August 7, 1995, the Higher Court to Protect Public Property issued a final judgment on the appeal against the warrants issued for Mr. Vila-Masot's arrest, after having revoked the constitutional protections, and declined its competence in courts with general jurisdiction.

With regard to the foregoing, the petitioner finds that Articles 8 and 25 have not been fulfilled because of violations of due process in the preliminary phase of the proceeding. The petitioner requests that the arrest warrant be declared null and void.

9. The petitioner filed a complaint with the Court Council Judicature accusing the judge who issued the arrest warrant. That complaint was dismissed. The petitioner is also making allegations before this Commission of "corruption," "judicial terrorism," and "judicial mafias":

The core of our accusation [...] is based on the following facts: A well-known "judicial mafia" composed of [...] conspired and banded together with current and former public officials, agencies in the Venezuelan government, citizens in the private sector, and bribable and corrupt judges in the criminal jurisdiction, in order for the latter to issue separate warrants for the arrest of the undersigned, while at the same time conspiring with a corrupt civil and commercial judge to unduly take possession of a piece of real estate valued at several billion bolívares through a fraudulent declaratory judgment of bankruptcy, in flagrant violation of Articles 8, 11, 21, 25, and 29 of the American Convention on Human Rights; Articles V and XXVI of the American Declaration of the Rights and Duties of Man; and Article 14(1) and (2) of the American Treaty on Civil and Political Rights[FN3].

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[FN3] Written argument of the petitioner dated June 25, 1998.  
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10. The State contends that this petition is inadmissible based on the premises of Article 47 of the Convention. It further claims that the petitioner has not exhausted domestic remedies and that he has refused the use of effective remedies. It maintains that the alleged facts are in no way a violation of rights protected in the Convention. "The proceedings against Mr. Vila-Masot are paralyzed for reasons attributable to his person and not to the State." [FN4] The State does not waive the preliminary exceptions.

[FN4] State document dated April 21, 1998, page 5.

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11. The State requests that the Commission declare this case inadmissible and that it declare itself incompetent to apply the American Declaration of the Rights and Duties of Man by virtue of the principle of *ratione materiae*. It further requests that the Commission adjust its competence and declare itself incompetent to hear complaints contained in international instruments other than the Convention itself.

### III. PROCESSING

12. The petition was received on December 23, 1993, and has been processed as established in the Regulations of the Commission.

### IV. CONSIDERATIONS

13. The State having set forth the exception of failure to exhaust remedies under domestic law, 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.[FN5] To this end, the State has not specified which remedies under domestic law have not yet been exhausted.

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[FN5] CIDH, María Eugenia Morales de Sierra Case, Report N° 28/98, Case 11.625 (Guatemala), published in the 1997 Annual Report of the CIDH, paragraph 28.

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14. Although the criminal proceedings themselves have not been concluded, since there is not yet a final decision on the alleged guilt of the petitioner for the criminal behavior of which he is accused, the Commission considers that with regard to the arrest warrant—which is fundamentally what the petitioner is pleading before this Commission—the petitioner did exhaust the corresponding remedies. Given the above, the Commission does not accept the exception presented by the State of failure to exhaust remedies under domestic law.

15. Regarding the provisions of Article 47(b) of the Convention, the Commission does not find that the facts presented constitute any violation of the rights protected under the Convention. Under "the fourth instance" formula, the Commission cannot review the judgments issued by the domestic courts acting within their competence and with due judicial guarantees, unless it considers that a possible violation of the Convention is involved.[FN6]

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[FN6] See Report N° 39/96, Case 11.673 (Argentina), published in the Annual Report of the CIDH, page 79 and up.

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16. The Commission is competent to declare a petition admissible and rule on its merits when it portrays a claim that a domestic legal decision constitutes a disregard of the right to a fair trial, or if it appears to violate any other right guaranteed by the Convention. However, if it contains nothing but the allegation that the decision was wrong or unjust in itself, the petition must be dismissed under this formula. The Commission's task is to ensure the observance of the obligations undertaken by the States Parties to the Convention, but it cannot serve as an appellate court to examine alleged errors of internal law or fact that may have been committed by the domestic courts acting within their jurisdiction.[FN7]

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[FN7] Ibid.  
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17. The petitioner's disagreement with the judicial decisions that have been rendered within the competence of the jueces naturales (judges whose positions are created by law with general jurisdiction over an issue before or at the time it arises) does not support the Commission's review of those decisions. The Commission is not an appellate court and is not responsible for overturning judicial decisions, but rather for ensuring that the State's judicial activity adheres to due process.

18. Therefore, the petitioner's accusations, such as "judicial terrorism," with regard to a judge's motives for delivering a given decision are not relevant from the point of view of the international protection of human rights, if the judicial decision is issued within a framework of procedural guarantees.

19. The Commission recalls that the deciding factor is not the subjective fear of the interested party regarding the impartiality that the court issuing the judgment should have, but rather the fact that circumstances may objectively support that his or her fears are justified. To this end, the European Court has stated that, in principle, the impartiality of the members of a court will be presumed until proven to the contrary.[FN8]

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[FN8] European Court of Human Rights, *Albert and Le Compte v. Belgium*, February 10, 1983, Series A No. 58, Application No. 7299/75 and 7496/76, (1983) 5 EHRR 533, & 32.  
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20. Based on the facts denounced, the Commission cannot reach the conclusion that the decisions of the court have been or will be partial or in violation of due process. The proceedings of a national court exercising its competence do not show any violation of the judicial guarantees enshrined in the American Convention.

21. The Commission denies the State's request that it declare itself incompetent to enforce the rules of the American Declaration of the Rights and Duties of Man. The Commission deems itself competent to enforce all rules relating to the inter-American human rights system, of which the Declaration is a part, with the status of a mandatory rule of *ius cogens* or international customary law.

## V. CONCLUSIONS

22. The Commission does not grant the exception concerning the failure to exhaust remedies under domestic law. However, it does grant the exception set forth in Article 47(b) of the Convention, on the basis of which it declares the present case inadmissible. The Commission also deems itself competent to enforce the rules that make up the inter-American human rights system.

23. Based on the foregoing arguments of fact and of law and in accordance with Article 47(b) of the Convention,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

24. To declare the present case inadmissible.

25. To transmit this report to the State and to the petitioner.

26. To publish this report and include it in the Commission's Annual Report to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on the twelfth day of the month of October, 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.