

Institution: Inter-American Commission on Human Rights
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Title/Style of Cause: Mevopal, S.A. v. Argentina
Doc. Type: Decision
Decided by: Chairman: Professor Robert K. Goldman;
First Vice-Chairman: Dr. Helio Bicudo;
Second-Vice Chairman: Dean Claudio Grossman;
Commissioners: Prof. Carlos Ayala Corao, Dr. Jean Joseph Exume, Dr. Alvaro Tirado Mejia.
Dated: 11 March 1999
Citation: Mevopal, S.A. v. Argentina, Petition, Inter-Am. C.H.R., Report No. 39/99, OEA/Ser.L/V/II.106, doc. 6 rev. (1999)
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I. SUMMARY

1. On January 9, 1998, MEVOPAL, S.A. (hereinafter the "petitioner") filed a petition with the Inter-American Commission on Human Rights (hereinafter the "Commission") via its legal representative. The petitioner alleged that its rights to judicial guarantees (Article 8, "Right to a Fair Trial"), property (Article 21), and equal protection (Article 24), established in the American Convention (hereinafter the "Convention"), had been violated by the State of Argentina (hereinafter the "State" or "Argentina"), in that the Argentine judicial authorities had dismissed a claim for breach by the State of three construction contracts.

2. It was the view of the Commission that, under the terms established in Article 44, it is competent to hear a petition lodged by Mevopal, S.A.--a private juridical person--against Argentina, a State Party to the Convention. Notwithstanding, as Mevopal, S.A. claimed to be the presumed victim, the Commission concluded that *ratione personae* it did not have competence, inasmuch as juridical persons are not protected by the Convention, in accordance with Article 1(2). Consequently, the Commission declared the petition inadmissible in view of its being manifestly and "obviously out of order" in terms of the requirements established in Article 47(c) in conformity with Article 1(2) of the American Convention.

II. POSITION OF THE PETITIONER

3. For the purposes of this decision, which deals only with the admissibility of the petition against Argentina, the facts can be summarized as follows:

4. The petitioner alleges that MEVOPAL, S.A., a construction company, entered into three construction contracts with the Provincial Housing Institute in the Province of Buenos Aires. The Province breached these contracts in various respects (land not delivered, constant modification of projects, failure to pay for project certification, etc.). The petitioner also states that this breach of contract caused it to lose its working capital and that it survives only as a juridical person but is not in operation.

5. In response to this breach of contract, the company filed an administrative suit with the Supreme Court of Justice of the Province of Buenos Aires, seeking rescission of the contracts due to negligence on the part of the Housing Institute and payment of damages and all outstanding amounts owing to the company. The Provincial Supreme Court held that both parties were at fault, dismissed the claim for rescission resulting from negligence, and, among other claims for damages, recognized only the non-recovered expenditures incurred by MEVOPAL, S.A. in the three projects.

6. In an appeal filed by the respondent, the Argentine Supreme Court of Justice subsequently reduced the award for non-recovered expenditures to two projects. The petitioner alleged that its rights had been violated by a suit against the Buenos Aires Provincial Housing Institute relating to the payments due to MEVOPAL, S.A. in proceedings before the Supreme Court of the Province of Buenos Aires.

7. In the view of the petitioner, the decision by the Provincial Court injured MEVOPAL's interests, in that it modified the prior ruling, which was final. Furthermore, the petitioner also believes that the non-recovered expenditures should have been reimbursed in accordance with the rulings on Criba y Marbes, and Martínez y de la Fuente (Cases Nos. B-50.901 and B-4978, respectively).

8. Following this decision, the petitioner successively filed an extraordinary appeal and a complaint appeal, the latter being rejected by the Argentine Supreme Court of Justice under Article 280 of the Argentine Code of Civil and Commercial Procedure.

III. ANALYSIS OF THE COMPETENCE OF THE COMMISSION

9. Before opening a case on the presumed violation of the American Convention by the State of Argentina, the Commission must determine whether it has *ratione personae* competence to examine the petition lodged by Mevopal, S.A., as a legal entity. Consequently, the Commission will undertake the following analysis: firstly, passive competence relating to those persons against whom petitions or communications are presented; secondly, active competence, i.e., the Commission's authority to act in relation to the persons presenting these petitions or communications; and thirdly, active competence in relation to the person presenting itself as the presumed victim under the terms established in Article 1 of the Convention.

10. On the first point, the Commission holds that it has passive competence to examine any accusations, complaints or allegations brought against a state party to the Convention, pursuant to various provisions established in the latter and, in particular, generically in Articles 44 and 45. This competence lies in the very nature of the inter-American system for the protection of human

rights, according to which all states parties undertake to respect and guarantee the rights and freedoms recognized in the Convention (Article 1). In the current petition, the State of Argentina is alleged to have violated rights protected by the Convention to which it has been Party since September 5, 1984, the date on which its instrument of ratification was deposited with the General Secretariat of the Organization of American States. The Commission considers itself competent to hear the current petition, inasmuch as Argentina, a state party, is alleged to have violated human rights.

11. On the second point, the active competence of the Commission, i.e., its authority to act in relation to those presenting petitions or communications, differs according to whether it is a case of individual petitions or communications between states. In the latter instance, the Commission is competent if one state party to the Convention presents communications against another state party, in accordance with the conditions of reciprocity specified in Article 45. Nevertheless, this provision does not apply to the present case, in that at no time does it constitute the presentation of a communication between states but rather the presentation of a petition.

12. In the system of individual petitions, the Commission has active competence when "any person or group of persons or any nongovernmental entity legally recognized in one or more member states of the Organization" presents a denunciation or complaint pursuant to Article 44. In this petition, Mevopal, S.A. presented itself to the Commission as a private juridical person, legally established and with legal capacity to act in the State of Argentina. The Commission considers that "private juridical persons" may be assimilated to the notion of "non-governmental entity legally recognized" by the State of Argentina. Consequently, the Commission holds itself competent to hear a petition presented by Mevopal, S.A.

13. On the third point, the Commission notes that when alleging violation of its rights by the State of Argentina, Mevopal, S.A. presents itself as a victim. In this respect, it is necessary to point out that the notions of petitioner and victim are different in the inter-American system for the protection of human rights. In this regard, Article 26 of Commission Regulations in conjunction with Article 44 of the Convention establishes that the petitioner may present a petition to the Commission "on its own behalf"—identifying itself with the person of the victim—or "on behalf of third persons"—being a third party in relation to the victim and without there necessarily existing any personal relationship between the two. In this petition, the person of the petitioner is identical to that of the victim.

14. The Commission also considers that Mevopal, S.A. presented itself to the Commission via its legal representative in compliance with one of the requirements established in Article 32 (a) of Commission Regulations regarding the admission of a petition presented by an "entity." In accordance with this regulation, the Commission considers that the legal representative of an "entity" which presents a communication or petition identifies with that entity by virtue of its mandate and may not be considered as either the petitioner or the victim per se.

15. The Commission will now analyze whether it is competent to examine a petition in which the presumed victim is a legal entity. Article 1 of the Convention states the following:

1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

2. For the purposes of this Convention, person means every human being.

16. Under this provision and in accordance with the reiterated doctrine of this Commission and the jurisprudence of the Court, the Commission holds the term "victim" to be every person protected by the Convention as established generically in Article 1(1) in accordance with the regulations establishing the rights and freedoms specifically recognized therein.

17. Moreover, in accordance with the second paragraph of the transcribed regulations, the person protected by the Convention is "every human being"—in Spanish "todo ser humano", in French "tout être humain". Consequently, the Commission considers that the Convention grants its protection to physical or natural persons, excluding juridical or ideal persons from its field of application, inasmuch as the latter are legal fiction and do not enjoy real existence in the material order. This interpretation is confirmed on verifying the true significance attributed to the phrase "person is every human being" with the text of the Preamble to the Convention which recognizes that the essential rights of man are "based on attributes of his human personality" and reiterates the necessity of creating conditions which permit every individual to "achieve the ideal of free human beings enjoying freedom from fear and want."

18. In the present case, it is evident that the subject presenting itself before the Commission as presumed victim is a juridical person and not a physical or natural person, insofar as the petitioner has alleged that there is a substantial relationship between Mevopal, S.A. and the alleged violations. In effect, the violations stated by the petitioner before the Commission refer to acts or omissions on the part of the Argentine judicial authorities which allegedly caused damage to the company. Regarding the evidence presented by the petitioner, the Commission observes that all internal appeals were lodged and exhausted by Mevopal, S.A. as a juridical person. In this respect, the petitioner alleged that the case had been brought before the Supreme Court of Justice of the Province of Buenos Aires and the Argentine Supreme Court of Justice and recorded as Mevopal, S.A. vs. Province of Buenos Aires ref./Administrative Action (File N° M-143/97).

19. On the other hand, the Commission notes that Mevopal, S.A. has neither alleged nor proven that either its shareholders or any other physical person were victims of violations of human rights. Neither has it alleged that any physical or natural person exhausted the domestic remedies, came before the national authorities as an injured party or indicated any impediment to their doing so.

20. With regard to this petition, the Commission ratifies its practice and doctrine as set forth in the Banco del Perú[FN1] and Tabacalera Boquerón[FN2], in which it affirmed that it does not have *ratione personae* competence to hear a petition presented to the Commission by juridical or

ideal persons, inasmuch as the latter are excluded from subjects entitled to protection under the Convention.

[FN1] Inter-American Commission on Human Rights, Report N° 10/91, Case 10.169, Peru, Annual Report 1990-1991, p.452.

[FN2] Inter-American Commission on Human Rights, Report N° 47/97, October 16, 1997, Paraguay, Annual Report 1987, p.229.

IV. CONCLUSIONS

21. The Commission considers this petition inadmissible because it is "obviously out of order" in terms of the requirements established in Article 47(c) in conformity with Article 1(2) of the American Convention.

22. On the basis of the foregoing legal and factual arguments,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this petition inadmissible.
2. To inform the petitioner of this decision.
3. To publish this decision and include it in the Commission's Annual Report to the OAS General Assembly.

Done and signed in the seat of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on the 11th day of the month of March, 1999. (Signed): :Robert K. Goldman, Chairman, Hélio Bicudo, First Vice Chairman; Claudio Grossman; Second Vice Chairman; Commissioners, Alvaro Tirado Mejía, Carlos Ayala, and Jean Joseph Exumé.