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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 75/99; Case 11.800
Session: Hundred and Third Special Session (3 – 7 May 1999)
Title/Style of Cause: Cesar Cabrejos Bernuy v. Peru
Doc. Type: Decision
Decided by: Chairman: Professor Robert K. Goldman;
First Vice-Chairman: Dr. Helio Bicudo;
Second-Vice Chairman: Dean Claudio Grossman;
Members: Prof. Carlos Ayala Corao, Dr. Jean Joseph Exume, Dr. Alvaro Tirado Mejia.
Dated: 4 May 1999
Citation: Cabrejos Bernuy v. Peru, Case 11.800, Inter-Am. C.H.R., Report No. 75/99, OEA/Ser.L/V/II.106, doc. 6 rev. (1999)
Represented by: APPLICANT: Asociacion Pro Derechos Humanos
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I. SUMMARY

1. On August 28, 1997, a petition was filed before the Inter-American Commission on Human Rights (hereinafter "the Commission") by the nongovernmental organization, Asociación Pro Derechos Humanos (APRODEH), denouncing that the Republic of Peru (hereinafter "Peru," "the State," or "the Peruvian State") had violated the human rights of Mr. César Cabrejos Bernuy (hereinafter the "petitioner"), by failing to comply with a court order to reinstate him in the position of Colonel in the National Police. The petitioner alleges that, through contempt of court, the State infringed his right to judicial protection, established in Article 25 of the American Convention on Human Rights (hereinafter the "Convention" or the "American Convention"). The State alleges that the case is inadmissible, claiming the victim failed to exhaust domestic remedies. The Commission believes that the requirement to exhaust domestic remedies is not applicable here, finds the case admissible, and decides to conduct an in-depth examination into the matter and to place itself at the disposal of the parties involved, with a view to reaching a friendly settlement on the basis of respect for the human rights enshrined in the Convention.

II. PROCEEDINGS BEFORE THE COMMISSION

2. On September 2, 1997, the Commission opened the case, forwarded the pertinent parts of the petition to the Peruvian State, and requested the latter to provide information within a period of 90 days. The State responded on December 3, 1997, and, on December 17th, the Commission forwarded to the petitioner the pertinent parts of the Peruvian State's response. The petitioner did not present any observations regarding the State's response.

III. POSITIONS OF THE PARTIES

A. Petitioner

3. The petitioner claims that Mr. César Cabrejos Bernuy had served in the National Police for 22 years when, on July 31, 1990, he was relieved of duty, along with 94 other colonels of the National Police, as part of a supposed staff reorganization.

4. The petitioner says that the aforesaid discharge took place amid a big media campaign, in which the discharge of the officers was presented as an anti-moral measure, thereby affecting his right to honor and reputation.

5. Mr. Cabrejos Bernuy instituted administrative proceedings against the decision to discharge him, and later, in a judicial proceeding, filed a writ of amparo, which was admitted by the Chamber of Constitutional and Social Matters of the Supreme Court of Justice on June 5, 1992. The aforementioned decision ordered the reinstatement of Mr. Cabrejos Bernuy.

6. The petitioner claims that, despite repeated requests to the Judiciary for the judgment to be complied with--and even the intervention of the Congress--the Police did not comply with the court order. Finally, on December 28, 1995, through Supreme Resolution N° 1389-95-IN/PNP the National Police ordered the victim's return to active service, effective December 27 of the same year.

7. However, by order of Supreme Resolution N° 1445-95-IN/PNP of December 29, 1995, effective as of December 27, 1995, Mr. Cabrejos Bernuy was again relieved of duty by the National Police, again on grounds of a staff reorganization. Faced with this situation, Mr. Cabrejos Bernuy went first before the Fifth Civil Court in Lima and then before the Superior Court. The latter declared inapplicable the new administrative resolution which prescribed that the victim be relieved of duty.

8. The petition says that subsequently Mr. Cabrejos Bernuy was again reinstated, under Supreme Resolution N° 0227-97-IN/PNP of March 19, 1997. However, by means of Supreme Resolution N° 0237-97-IN/PNP of March 26, 1997 of the same year, he was again relieved of duty once more on grounds of staff reorganization.

9. In light of this situation of manifest and repeated disobedience of court decisions, the petitioner considers that his right to judicial guarantees and to effective judicial protection, embodied in Article 25 of the Convention, has been violated.

B. State

10. The Peruvian State maintains that the petitioner did not exhaust the domestic remedies offered under Peruvian Law since he did not institute another amparo proceeding against the third resolution relieving him of duty and, consequently, that the petition should be declared inadmissible.

IV. ANALYSIS OF ADMISSIBILITY

11. The Commission must analyze the admissibility requirements for a petition set forth in the Convention.

A. Competence *ratione materiae*, *ratione personae*, and *ratione temporis* of the Commission

12. With regard to subject matter jurisdiction, the Commission finds that the events set forth by the petitioner, which went undisputed by the State, show that there is a final judgment dated June 5, 1992 ordering the reinstatement of Mr. Cabrejos Bernuy to his position within the National Police. The petitioner claims that this order has not been executed and that although the National Police had decided twice to reinstate Mr. Cabrejos Bernuy to his position, in reality he never was reinstated, since immediately afterwards new resolutions were passed relieving him of duty.

13. Article 25 of the Convention specifically stipulates that States parties undertake to ensure that the competent authorities enforce any remedies stemming from simple and prompt recourse, or any other effective recourse, for protection against acts that violate a person's basic rights. The Commission therefore has competence *ratione materiae* to decide whether or not the alleged failure to enforce the June 5, 1992 decision of the Chamber of Constitutional and Social Matters of the Supreme Court of Justice, resulting from the writ of amparo filed by Mr. Cabrejos Bernuy, constitutes a violation by the Peruvian State of Article 25 of the Convention. Consequently, in the matter raised by the petitioner, the Commission is competent *ratione personae* to hear this case.

14. Regarding competence *ratione personae*, the Commission finds that the petitioner is accusing the Peruvian State of violating human rights enshrined in Article 25 of the Convention. Since Peru ratified the Convention on July 28, 1978, the Commission has competence *ratione personae* to hear this case, as expressly provided for in Article 33 of the Convention. Regarding the petitioner, the Commission notes that the Asociación Pro Derechos Humanos (APRODEH) is a legally recognized nongovernmental organization in Peru and therefore, pursuant to Article 44 of the Convention, may present petitions to the Commission.

15. Regarding competence *ratione temporis*, the Commission finds that the alleged transgression took place from 1992 on, i.e. after 1978 when Peru ratified the American Convention. The Commission therefore finds that it has competence *ratione temporis* to hear this case.

B. Admissibility requirements for the petition

a. Exhaustion of domestic remedies

16. In his petition, the petitioner argues that the Constitutional and Social Chamber of the Supreme Court's decision of June 5, 1992, is binding and therefore no appeal is required to that end. Furthermore he maintains that he was reinstated and again relieved on December 28, 1995, and that although no appeal is required to give effect to a decision emanating from a decision

handed down by the Supreme Court of Justice, the fact is the victim went before the Fifth Civil Court in Lima and then the Superior Court to request compliance with the verdict and the Superior Court declared inapplicable the second administrative resolution that again ordered the victim's discharge.

17. Given the above, the petitioner claims that the National Police reinstated him to his position only to immediately relieve him of duty again, through a third resolution identical in content to the previous ones.

18. The State maintains that the petitioner should have filed another writ of amparo against the third resolution relieving him of duty.

19. The Commission found 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".[FN1] In the case in question, the State argues that in order to exhaust domestic remedies, the victim would have had to file a new writ of amparo against the third resolution relieving him of duty. The Commission finds this argument to be groundless. The petitioner's claim does not in fact refer to the third resolution relieving the victim of duty on March 26, 1997, but rather to the on-going failure to enforce the judgment of the Chamber of Constitutional and Social Matters of the Supreme Court of Justice handed down on June 5, 1992 ordering his reinstatement.

[FN1] IACHR, María Eugenia Morales de Sierra Case, Report N° 28/98, Case 11.625 (Guatemala) published in the Annual Report of the Commission 1997, paragraph 28. See also Article 37(3) of the Regulations of the Commission and, for example, the Inter-American Court of Human Rights, Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987, Series C, N° 1, Para. 88.

20. Inasmuch as the State failed to fulfill its procedural duty to indicate the specific domestic remedies that remained available and effective for the victim to have the aforementioned June 5, 1992 judgment of the Supreme Court of Justice enforced, the Commission finds that this case falls under the exception set forth in Article 46(2)(a) of the Convention, which stipulates that the requirement to exhaust domestic remedies set forth in Article 46(1)(a) of the Convention is not applicable when "the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated".

b. Deadline for lodging the petition

21. As regards the admissibility requirement established in Article 46(1)(b) of the Convention that petitions are to be lodged within a period of six months from the date on which the victim was notified of the final judgment exhausting domestic remedies, the Commission finds that this requirement is also not applicable in this case, since the exception set forth in Article 46(2)(a) of the Convention as stated above is applicable, so is the exception referring to the time frame in which a petition must be lodged, as set forth in Article 46(2) of the Convention.

22. Without prejudging the merits of the case, the Commission must add that failure to enforce a final judgment is an on-going violation by States that persists as an infraction of Article 25 of the Convention, which sets forth the right to effective judicial protection. Therefore, in such cases, the requirement regarding the deadline for lodging a petition, set forth in Article 46(1)(b) of the American Convention, is not applicable.

c. Duplication of proceedings and res judicata

23. To the Commission's knowledge the subject of the petition is not pending in another international proceeding for settlement, nor is it substantially the same as one previously studied by the Commission or by another international organization. Therefore, the requirements established in Articles 46(1)(c) and 47(1)(d) are also satisfied.

d. Characterization of the allegations

24. The Commission considers that the facts set out by the petitioner tend to establish a violation of the rights guaranteed by the Convention, since as established above, the matter at hand is whether or not the alleged failure to enforce a judgment of the Supreme Court of Peru constituted a violation of the Convention on the part of Peru.[FN2]

[FN2] Regarding the alleged on-going failure to enforce the judgment and the judicial remedies exercised fruitlessly, please see, for the purpose of comparison, IACHR General Gallardo Case, Report N° 43/96, Case 11.430 (Mexico), published in the Annual Report of the IACHR 1996, starting on page 585 in the Spanish text.

V. CONCLUSIONS

25. The Commission considers that it is competent to receive this case and that the petition is admissible pursuant to the requirements set forth in Articles 46 and 47 of the Convention.

26. Based on the de facto and de jure arguments set out above, and without this in anyway constituting a ruling on the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present case admissible.
2. To notify the Peruvian State and the petitioner about this decision.
3. To continue to examine the merits of the case.
4. To place itself at the disposal of the parties, with a view to reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in the Convention. The

Commission invites both parties to reply on their willingness to initiate such a friendly settlement process.

5. To publish this decision and include it in the Commission's Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Washington, D.C., on the 4h day of the month of May, 1999.
(Signed): Robert K. Goldman, Chairman; Hélio Bicudo, First Vice-Chairman; Claudio Grossman, Second Vice-Chairman; Commissioners: Alvaro Tirado Mejía, Carlos Ayala Corao and Jean Joseph Exumé.