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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 88/99; Case 12.013
Session: Hundred and Fourth Regular Session (27 September – 8 October 1999)
Title/Style of Cause: Lino Cesar Oviedo v. Paraguay
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.
Dated: 27 September 1999
Citation: Cesar Oviedo v. Paraguay, Case 12.013, Inter-Am. C.H.R., Report No. 88/99,
OEA/Ser.L/V/II.106, doc. 6 rev. (1999)

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I. SUMMARY

1. In a petition received by the Inter-American Commission on Human Rights (hereinafter called "the Commission" or "the IACHR") on October 6, 1997, Mr. Lino César Oviedo (hereinafter "the petitioner") complained that the Republic of Paraguay (hereinafter "Paraguay," "the State," or "the Paraguayan State") violated his rights to a fair trial, to participate in politics, to equality before the law, and to respect for his honor and dignity enshrined in Articles 8, 23, 24 and 11, respectively, of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") as a result of proceedings instituted against him. The State alleged that the case is inadmissible. The Commission is of the view that the petitioner did not present facts that characterize, prima facie, violation by the Paraguayan State of rights enshrined in the Convention, and pronounces the complaint inadmissible.

II. PROCESSING BY THE COMMISSION

2. On October 6, 1997, the Commission received a complaint against the Paraguayan State filed by the petitioner with the assistance of Dr. José Francisco Appleyard. On January 14, 1998, Dr. Carlos Bastón presented additional arguments in favor of the petitioner. On February 10, 1998, the Commission told the petitioner that it was unable to process his petition because he had failed to exhaust the remedies under domestic jurisdiction. On May 6, 1998, the petitioner, assisted by Drs. José F. Appleyard, José A. Mesías L., and Carlos A. Bastón, supplemented and amplified the original complaint, stating that the remedies under domestic jurisdiction had been exhausted on April 17, 1998. On June 9, 1998, the Commission opened the case and asked Paraguay to reply within 90 days.

3. The State replied on July 29, 1998. The Commission forwarded the State's reply to the petitioner on August 3, 1998, and asked him for observations thereon within 30 days. Those observations were presented by the petitioner on February 1. On February 19, 1999, the Paraguayan State presented a document in which it agreed with some of the petitioner's allegations, and asked that a friendly settlement proceeding be opened. On March 19, 1999, the petitioner presented a document in which he insisted on the terms of his complaint and asked the IACHR to decide the case. On June 1, 1999, the State presented a note "withdrawing the terms of the note presented on February 19, 1999," and desisting from its request for a friendly settlement proceeding made therein. On July 8, 1999, the petitioner presented observations on the State's note of February 19, 1999.

III. POSITIONS OF THE PARTIES

A. Position of the petitioner

4. The petitioner asserts that on April 22, 1996, when he was serving as the Commander of the Army, the President of Paraguay, Mr. Juan Carlos Wasmosy, informed him of his decision to relieve him of his post as Commander of the Army and to retire him from active service. The petitioner states that he accepted the decision of the President of the Republic and was going to surrender command of the Army on the date set by the President, but that President Wasmosy inexplicably and unwarrantedly "imagined" that he had attempted a coup d'état.

5. The petitioner says that, as a result of what had happened, a criminal proceeding had been opened ex officio before the First Instance Trial Court of the First Circuit of Asunción and that on July 9, 1996, that court issued interlocutory order N° 1099 stating the charges against him. That same day the Court issued interlocutory order N° 1100 stating its decision not to exempt him from the preventive detention order served on him. The petitioner said that his counsel filed motions for appeal against and annulment of those interlocutory orders Nos. 1099 and 1100.

6. The petitioner says that on August 7, 1996, the Third Chamber of the Higher Criminal Court revoked interlocutory order N° 1289 on the grounds that the facts investigated did not constitute either disobedience or the commission of any crime, nor a foiled crime. He says that on December 30, 1996, the same Criminal Court issued interlocutory order N° 557 rescinding the above-mentioned interlocutory order N° 1099 of July 9, 1996, which had stated the crimes with which the petitioner was charged. He alleges that, in accordance with the aforementioned interlocutory decisions he "was definitively acquitted by his country's judiciary, no constituent elements of the criminal acts charged against him having been found."

7. The petitioner states that on December 24, 1996, the investigating officer filed a request for rescission of interlocutory order No. 513 of April 1997 on grounds of unconstitutionality, and that on April 17, 1997, the Supreme Court of Justice handed down sentence No. 186 voiding that decision and thereby reopening the proceeding.

8. He alleges, moreover, that on January 8, 1998, a Special Military Tribunal set up by Executive Branch decree N° 17 of May 29, 1997, to try retired Brigadier General Sindulfo Ruiz

Ramírez and accomplices and accessories after the aforementioned acts of April 1996, ordered his arrest in connection with those acts.

9. He says that on January 30, 1998, the Special Military Tribunal charged him with the crimes described in Article 88 (a) and (b) of the Military Criminal Code pursuant to Articles 91 and 138 of that Code, and to Article 148 of the Criminal Code. He states that on March 2, 1998, the military prosecutor indicted him, and on March 4, 1998, the Military Tribunal decided there was no cause for oral proceedings, and set a date for final sentencing.

10. The petitioner states that on March 9, 1998, the Special Military Tribunal handed down final sentence N° 1/98 condemning him to ten years in military prison for crimes against order and security in the Armed Forces and for insubordination, plus any resulting civil liability, and also ordered his dismissal from the service. He says that he appealed against this sentence and filed for its annulment.

11. The petitioner says that on April 3, 1998 his counsel stated grievances and justified the appeal against final sentence N° 1/98 of the Special Military Tribunal and for its annulment. In the end, the petitioner says, the Supreme Court of Justice, in Decision and Sentence N° 84 of April 17, 1998, confirmed the Special Military Tribunal's final sentence N° 1/98. He alleges that, with Supreme Court of Justice sentence No. 84, remedies under domestic jurisdiction had been exhausted and, hence, Mr. Oviedo's sentence to ten years of military imprisonment remained final.

B. Position of the State

12. The State indicates that on April 22, 1996, the President of the Republic conveyed to the petitioner his decision to place him on the retired list, and that the petitioner adopted an attitude of open insubordination, saying that he did not accept the dismissal from his post and would not obey it. The State alleges that several persons in and outside the country made efforts to persuade the petitioner to abandon this attitude, but that he remained immovable and entrenched in the headquarters of the First Army Corps, relying on the firepower of his powerful combat unit. The State maintains that the petitioner's first objective was to have his forced retirement revoked and that he then attempted to force the resignation of the President and Vice President of the Republic.

13. The State mentions that, in addition to diverse elements of Paraguayan society, the international community, and especially the MERCOSUR and OAS countries, witnessed the situation so created and played a very important part in its resolution. It states that, on April 22, 1996, the United States Embassy in Paraguay issued an official communiqué in support of democracy, and later statements of support came in from several ambassadors, including those of Brazil, Argentina and Uruguay, and that several other diplomats expressed support as well, such as the Papal Nuncio and the ambassadors of Chile, Bolivia, Germany, the United Kingdom, Italy, France and Spain.

14. The State points out that in the early hours of April 23, 1996, the Air Force, the Navy and the Supreme Court of Justice, among other institutions, issued statements in favor of the

Government, and that that same morning the Secretary General of the OAS, Dr. César Gaviria, "in a gesture worthy of our eternal gratitude, came to Asunción (...) and took an active and sagacious part in solving the crisis."

15. The State adds that the Permanent Council of the OAS decided to apply resolution AG/RES. 1080 (XXI-O/91) on the grounds that an irregular interruption of the democratic political institutional process had taken place, for although then President Wasmosy was in touch with all the members of his cabinet, he was not exercising his civil powers to their full extent. It stated that the Permanent Council immediately adopted resolutions on the preservation of democracy in Paraguay, and the Inter-American Commission on Human Rights itself pronounced on these events in the following terms:

The Commission, considering that it could not overlook recent events which endangered the political stability of Paraguay, sent a note to the President of that member state, Juan Carlos Wasmosy, expressing its condemnation of the attempts at destabilization and its satisfaction that these were rejected. In that regard it stated that the solution achieved has confirmed the free expression of the popular will in that country and represents an important advance in the consolidation of democracy in the Hemisphere.[FN1]

[FN1] IACHR, Press Release N° 8/96, Annual Report 1996, OEA/Ser/L/V/II.95, Doc. 7 rev., March 14, 1997, p. 846.

16. The State says that, despite the vehemence of the statements made by different persons and institutions, the petitioner did not retract from his insubordination. It states that the President of the Republic offered the petitioner the Defense portfolio if he would first accept retirement, and that when that retirement took place, the President addressed the nation and announced that in response to the public will and as a moral imperative, he would not appoint Mr. Oviedo as Minister of Defense.

17. The State notes that the trial of the acts here referred to in the regular courts has not yet ended, and that as of the date of the State's reply, the case file was in the Supreme Court of Justice, and had been combined with the investigation into the sentence handed down by the Special Military Tribunal.

18. Regarding the trial in the military jurisdiction, the State reported that on May 29, 1997, the President of the Republic had issued Decree N° 17.365 constituting the Special Military Tribunal to try retired General Sindulfo Ruiz Ramírez and those found to be his accomplices and accessories after the fact.

19. It alleges that on January 8, 1998, at the request of the ad hoc Military Prosecutor General, the Special Military Tribunal ordered the arrest of the petitioner. It adds that the Special Military Tribunal directed that the petitioner was to remain under its jurisdiction and instructed him to appoint counsel. It says that, since the petitioner chose not to appoint his own defense counsel, the Military Tribunal proceeded to appoint one for him in the person of the Defender of

Poor Military Defendants. This Defender subsequently advised the Tribunal that the petitioner had refused his services.

20. The State asserts that on February 3, 1998, the Special Military Tribunal went to the place of the petitioner's confinement to take his unsworn statement, which, however, he refused to make, alleging that he was not in a physical or mental condition to do so. It adds that on the same occasion General Oviedo presented another document impugning the Special Military Tribunal's appointment of a public defender for him, but did not designate any defender to replace the one appointed by the Tribunal.

21. The State points out that on February 28, 1998, the Special Military Tribunal issued interlocutory order N° 17.198, in which it declared the summary hearing closed, and passed the file to the military prosecutor for the presentation of charges, and then to counsel for the accused. It adds that both defenders questioned this decision and hence did not present their conclusions within the prescribed term. In view of this the Special Military Tribunal pronounced them in contempt of court and issued a writ called "records for sentencing" (autos para sentencia), and on March 9, 1998, handed down its final sentence N° 1/98 condemning the petitioner to ten years of military imprisonment, and accessory provisions.

22. It states that the petitioner resorted to the relevant legal remedies, as a result of which the matter came before the Supreme Court of Justice, which on April 17, 1998, issued sentence N° 84 upholding in all its parts the sentence of the Special Military Tribunal.

IV. ANALYSIS

23. In what follows the Commission analyzes the requirements for admissibility of a petition as prescribed in the American Convention.

24. Article 47 of the American Convention prescribes at (b) and (c) that the Commission shall consider inadmissible any petition that "does not state facts that tend to establish a violation of the rights guaranteed" or when "the statements of the petitioner or of the state indicate that it [the petition] is manifestly groundless or obviously out of order."

25. The Commission has stated that it is not competent to review the judgements issued by the domestic courts acting within their competence with due judicial guarantees, or to rule on the grounds for those sentences except when, in domestic proceedings, guarantees of due process enshrined in the Convention have been violated or those sentences entail violation of any other right set forth in the Convention.[FN2] In such exceptional cases the IACHR is indeed competent "to adjudicate irregularities of domestic judicial proceedings which result in manifest violations of due process or of any of the rights protected by the Convention." [FN3]

[FN2] See IACHR Report N° 39/96, Case 11.673 (Argentina), October 15, 1996, Annual Report of the IACHR, 1996, paragraphs 50 and 51.

[FN3] Idem, par. 61.

26. In the present case former General Oviedo was tried and sentenced by a Military Tribunal that judged him on the basis of crimes committed in his capacity as Commander in Chief of the Army and consisting of, among other acts, rebellion and offenses committed by military personnel who "attempt violently to subvert military order and discipline by rising in arms against the powers of State," who "attempt by promises and gifts of any kind to bribe one or more members of the National Armed Forces, or who urge them to rise up publicly against the Government and its authorities," or who commit insubordination by refusing "openly to obey a service order from a superior officer or by using violence or making threats against him." The sentence was reviewed and upheld by the highest court of Paraguayan general jurisdiction, which is the country's Supreme Court of Justice.

27. The Commission will now consider the admissibility of the complaint before it, in which the petitioner requests that in application of the aforementioned exception, the Commission rule on the bases of fact and law in the decision of the Special Military Tribunal that sentenced him.

28. With respect to the petitioner's questioning of the right of the Special Military Tribunal to sentence him on the grounds that it was constituted after the events that gave rise to the proceeding, the Commission observes that Article 8 of the American Convention establishes the right to be heard by a tribunal "previously established by law." In this regard the State points out that the legal foundation for the constitution of that Special Military Tribunal is to be found in Article 174 of the Paraguayan Constitution, promulgated in 1992, in conjunction with the provisions of Articles 290 to 295 of the Code of Military Criminal Procedure, promulgated in 1980.

29. The Commission notes on this point that, while the Special Military Tribunal was constituted after the acts of April 1996 for which Mr. Oviedo was tried and sentenced, the aforementioned laws, which provide for the constitution of such military tribunals to judge acts committed by Generals, the number of judges, how they are chosen, and other aspects of the applicable procedure were promulgated prior to those acts. Therefore the Commission does not consider that the allegations of the appellant to this effect are prima facie evidence of a violation of Article 47(b) of the American Convention.

30. As far as the petitioner's other challenges of the Special Military Tribunal are concerned, the Commission reiterates its doctrine that military justice may be applied only to military personnel who have committed crimes in the line of duty, and that military courts do not possess the independence and impartiality required to try civilians. In the case under review the Commission notes that the Special Military Tribunal tried and sentenced Mr. Oviedo for "crimes against the order and security of the Armed Forces, and insubordination," committed in his capacity as a General of the Paraguayan Armed Forces. This case came before the Supreme Court of Justice of Paraguay, which in sentence N° 84 of April 17 1998, ruled as follows: "Article 174 of the Constitution establishes the existence of Military Tribunals to try crimes and misdemeanors of a military nature committed by military personnel on active duty. And Articles 290 to 295 of the Code of Military Criminal Procedure provide for the constitution of extraordinary courts-martial to try Generals." In addition, in the case under consideration the decision of the Special Military Tribunal was appealed against and ruled on in a civil court. The

petitioner presented no evidence to show that the civil court denied him due judicial guarantees. Hence the petitioner's allegations, his remarks on the State's reply and the other information on file are not persuasive enough for the Commission to pronounce the complaint admissible, based on the terms in which the petitioner has challenged his trial and sentence for the acts committed in April 1996.

31. Regarding the petitioner's complaint of violation of Article 8 of the American Convention on the grounds that the trial did not include an oral argument phase and because of several limitations on due process, the State replied that, although there was no oral argument phase, all the judicial guarantees applicable to Mr. Oviedo were upheld. Paraguay has asserted that Mr. Oviedo exercised to the full his right of defense during the military trial and that the Special Military Tribunal instructed him to appoint a defender, but that, since he did not do so, a public defender had to be appointed for him; that the petitioner recused members of the Tribunal; that when the petitioner was asked to make a deposition, he refused to make any statement; that the petitioner's counsel requested, and was supplied with copies of the file, impugned evidence and filed several appeals, including one against the final sentence. It also mentioned that the petitioner presented no final pleadings because he did not want to, but that nobody had prevented him from doing so. In its reply Paraguay had noted the existence of concrete proofs of these facts.

32. The Commission observes that the State gave a believable, detailed reply grounded in specific evidence, and the petitioner made no objection to the terms of that reply either in his statement of observations or at any later time. From the manner in which the aforementioned specific facts have been presented, the IACHR concludes that they fall short of constituting, *prima facie*, a violation of the American Convention.

33. Regarding the petitioner's argument that the Special Military Tribunal tried him on the same charges of which he had been acquitted by a civil court, in violation of Article 8(4) of the American Convention, the Commission observes that this article provides that "an accused person acquitted by a nonappealable judgment shall not be subjected to a new trial for the same cause."

34. In this regard the Commission notes that what the petitioner represents as "a nonappealable judgment for acquittal" is not properly such. The decisions of the Third Chamber of the Criminal Court, on which the petitioner bases his claim of having been acquitted and copies of which are present in the file of the case under study, contain no statement of acquittal, but interlocutory decisions that rescind interlocutory orders of the court of original jurisdiction ordering Mr. Oviedo's incarceration, describing the crimes under investigation, and denying the exemption from penalty sought by Mr. Oviedo. The Commission also notes that these interlocutory decisions did not constitute final sentences. The character of "final" or "nonappealable" applies to sentences against which no appeal, whether ordinary or special, may lie. In sentence N° 186 of April 17, 1997, the Supreme Court of Justice annulled interlocutory order N° 513 of the Third Chamber of the Criminal Court of Appeals, which in another, subsequent decision confirmed those interlocutory orders of the original jurisdiction that had previously been rescinded. Mr. Oviedo's counsel appealed against this new decision, and the results of those appeals have not been conveyed to the IACHR by any of the parties. Thus, those

decisions lacked the "nonappealable" character referred to in Article 8(4) of the American Convention. Therefore, the facts stated by the petitioner also do not constitute, prima facie, a violation of rights protected by that Convention.

35. The petitioner alleges that the trials to which Mr. Oviedo was subjected involve additional violations by the Paraguayan State of his right to participate in public affairs, to equal protection, and to honor and dignity, as provided in Articles 23, 24 and 11, respectively, of the American Convention. The Commission notes that these allegations derive from the violations implicit in the military tribunal trial of which he complains. However, given that the petitioner failed to describe acts that are prima facie violations of rights protected by the Convention in relation to his trials and suits before the military tribunal and civil courts, the Commission, too, is unable to find sufficient arguments for admitting the complaint in respect of those additional aspects cited by the petitioner.

36. To summarize, the Commission considers that from the petitioner's original complaint, his remarks on the State's reply and his other presentations to the Commission there emerge no facts characteristic prima facie of violation by the Paraguayan State of rights guaranteed by the Convention. Accordingly, and pursuant to Article 47(b) of the American Convention, the Commission must declare the complaint inadmissible.

V. CONCLUSIONS

37. The IACHR is of the view that the petitioner has not stated facts that tend to establish, prima facie, a violation by the Paraguayan State of rights protected by the American Convention on Human Rights. Therefore, pursuant to Article 47 (b) of that Convention, the Inter-American Commission on Human Rights concludes that the complaint presented by Mr. Lino César Oviedo against the Paraguayan State is inadmissible.

38. On the basis of the arguments of fact and law set forth above,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the complaint inadmissible.
2. To advise the petitioner and the State of this decision.
3. To publish this report and include it in its 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 27th day of the month of September, 1999. Signed by Robert K. Goldman, Chairman; Hélio Bicudo, First Vice-Chairman; Claudio Grossman, Second Vice-Chairman; and Jean Joseph Exumé and Carlos Ayala Corao.