Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 27/00; Case 11.755
Session:	Hundred and Sixth Regular Session (22 February – 10 March 2000)
Title/Style of Cause:	Carlos A. Lopez de Belva and Arturo J. Podesta v. Argentina
Doc. Type:	Decision
Decided by:	Chairman: Helio Bicudo; First Vice-Chairman: Claudio Grossman; Commissioners: Robert K. Goldman, Marta Altolaguirre, Robert K. Goldman, Peter Laurie, Julio Prado Vallejo The Second Vice-Chairman of the Commission, Juan Mendez, an argentine national, did not participate in the debate or in the vote on this case, in accordance with Article 19(2)(a) of the Regulations of the Commission.
Dated:	7 March 2000
Citation:	Lopez de Belva v. Argentina, Case 11.755, Inter-Am. C.H.R., Report No. 27/00, OEA/Ser.L/V/II.106, doc. 3. rev. (1999).

I. SUMMARY

1. On June 2, 1997, the Inter-American Commission on Human Rights (hereinafter "the Commission") declared the admissibility of the petition lodged by Carlos A. López De Belva and Arturo J. Podestá (hereinafter "the petitioners") in which they allege violations of their human rights by the Argentine Republic (hereinafter "the State" or "Argentina").

2. The petitioners allege being victims of human rights violations resulting from a corporative reaction of the judges of Buenos Aires Province due to the disciplinary action they brought against several of them for malfeasance. The case refers to a variety of legal proceedings promoted before different tribunals on three separate suits--a civil action, a disciplinary one against several judges, and a criminal trial, all of which were a result of the intervention of the petitioners as attorneys for Amílcar Cascales. Mr. Cascales filed a cross-complaint in the civil action against him in La Matanza Municipality, Buenos Aires Province, and obtained a favorable judgment against the plaintiff, who was ordered to pay damages. However, during the execution stage, a challenge on the installments already paid arose, and, thus, its continuation was indefinitely suspended--a situation that has continued until now, thirteen years later. The same challenge gave ground to bringing criminal charges against the petitioners, which concluded in a conviction, and induced the petitioners to seek disciplinary action against the judges.

3. In summary, the petitioners allege that Argentina, in the course of the three different sets of proceedings, has violated various of their rights protected by the Convention. They maintain that in the civil proceeding, the judge acted in excess of her powers by ordering the auditing of

the payments already made and by prohibiting the resumption of the execution. These decisions gave grounds for the subsequent criminal action brought against the petitioners and others. Moreover, the petitioners argue that in the criminal proceedings they were convicted for a nonexistent crime, they were prevented from fully exercising their right of defense because of their being barred from examining "various witnesses," they were given a double penalty despite it was termed as merely an accessory one, and they were unable to appeal the conviction because of the restrictions imposed on them by the procedural law applicable to the case. On the basis of these facts, they specifically allege to be victims of violations of their right to a fair trial, of the principle of legality, and of their right to judicial protection, enshrined in Articles 8, 9, and 25, of the American Convention on Human Rights (hereinafter "the Convention").

4. Without prejudging on the merits of the matter, the Commission finds that the case meets the admissibility requirements set forth in Articles 46 and 47 of the Convention, solely with regard to the civil and criminal proceedings. Consequently, the petition is admissible with respect to the allegations regarding a possible violation of the rights established in Articles 8, 9 and 25 of the Convention; and it is inadmissible insofar as the disciplinary proceeding promoted against the judges, since the admissibility requirement stipulated in Article 46(1)(b) of the Convention is not met.

II. PROCESSING BY THE COMMISSION

5. The Commission omits making a detailed account on the copious exchange of communications produced in the instant case. The record also contains several amicus curiae and communications conveyed by different non-governmental organizations, Argentineans and otherwise, in support of the petitioners.

6. The petitioners lodged their petition before the Commission on September 29, 1992. By communications dated September 27, 1995 and December 19, 1996, the Executive Secretary of the Commission informed the petitioners that the petition could not be processed, based on the provisions of Article 47(b) of the Convention. Between September 26, 1996 and June 2, 1997, the petitioners reported to the Commission a series of new facts relevant to the petition. Accordingly, on June 2, 1997, the Executive Secretariat of the Commission notified the petitioners that it had initiated the processing of the petition based on these new facts.

7. The State has sent communications about the case on six occasions, all of which have been transmitted to the petitioners. Also, the State was assured its procedural right to rejoinder. Furthermore, on October 6, 1997, during the Commission's 97th Session, a hearing was held with the participation of the parties' representatives.

III. POSITIONS OF THE PARTIES

A. Undisputed facts[FN1]

[FN1] This description only alludes to the most relevant procedural acts.

---

a. The civil action

8. On August 12, 1974, the Municipality of La Matanza, Buenos Aires Province, sued Amílcar Cascales for damages resulting from an alleged breach of contract in the lease of a cold storage plant located in San Justo, Buenos Aires Province. Amílcar Cascales was represented by the petitioners and filed a cross-complaint. Twelve years later, on June 12, 1987, he obtained a favorable adjudication by Ricardo Angel Kaul, Judge of the Fourth Court for Civil and Commercial Matters of the Judicial Department of General San Martín, Buenos Aires Province. The verdict found the plaintiff, the Municipality of La Matanza, liable to pay compensatory damages resulting from "reckless and malicious" conduct.

9. That sentence became res judicata and a proceeding for enforcement of staggered payment of the compensation was initiated, under the "silence or inaction of the debtor"[FN2]. This proceeding continued in a systematic manner for around two years (approximately 200 payments were approved and made). Upon the death of Judge Ricardo Angel Kaul, his vacancy was filled by three successive pro tempore judges until Judge María Inés Oderay Longhi was appointed as the new permanent judge. During that whole period, settlements, orders, and payments continued to be issued. Judge María Inés Oderay Longhi herself issued eleven checks between September 3, 1990 and the following October 30. One of the pro tempore judges who took cognizance of the case was Judge Carmen Cabrera de Carranza. In May 1990, she "determined that, as of that date, the settlements contained no mathematical errors".[FN3] However, the situation was apparently complicated by the hyperinflation that was then sweeping Argentina.

[FN2] Communication of the State dated July 6, 1994, not challenged in this respect by the petitioners.
[FN3] Communication of the petitioners dated September 29, 1992, not challenged in this respect by the State.

---

10. On November 5, 1990, Judge María Inés Oderay Longhi ordered the auditing of all the settlements made, pursuant to Article 36 of the Code of Civil and Commercial Procedure. The expert's report found a loss to the detriment of the Municipality of La Matanza in the amount of 14,926,700,603.62 australes, at October 1990 values. This was due to an incorrect calculation in the settlements, and to the fact that "the mechanism used [in the context of the extremely high inflation and interest rates existing in Argentina at the time] produced a cumulative effect on the interests, which was causing the debt to grow disproportionately".[FN4] At the same time, the judge suspended de facto the payment procedure. On August 31, 1992, the judge issued a ruling prohibiting renewal of the enforcement of the adjudicatory sentence and all incidental proceedings connected therewith. The effects of such ruling have continued to this date, with the sole exception that at the end of 1999, judicial approval of the accounting expert's report in the civil proceeding was revoked by the Civil Court of Appeals, and another audit report was requested.

[FN4] Communication of the State dated July 6, 1994, op. cit.

---

b. The criminal trial

11. Based on the findings of the audit, criminal charges were filed against the petitioners and other persons under the charge of defrauding the public administration, and against the later deceased Judge Ricardo Angel Kaul for breach of public duty. Three legal counselors and an accountant of the Municipality of La Matanza were also charged.

12. The Fifth Criminal Court of San Martín delivered a judgment on March 1, 1993, in which it found the petitioners guilty of being accessories to the crime of attempted fraud of the public administration and sentenced them to two years and nine months imprisonment as a principal punishment, and ordered special disqualification barring them from practicing law for eight years as a cumulative penalty. The Court also notified the judge of the Fourth Departmental Court for Civil and Commercial Matters in charge of approving the execution payments, of the conviction of the petitioners.

13. The petitioners unsuccessfully lodged recurso extraordinario, de inaplicabilidad de la ley, de nulidad and de inconstitucionalidad, before the Supreme Court of Buenos Aires, to contest the conviction issued by the First Tribunal of the Chamber of Appeals for Criminal and Correctional Matters of San Martín, dated December 26, 1995, which upheld the judgment of the lower court. Having exhausted remedies under the provincial jurisdiction, the petitioners took their case to the Supreme Court of Justice of Argentine where they filed a recurso extraordinario and a recurso de queja, which were denied. The case against the other codefendants continues before the Supreme Court of Justice of Buenos Aires, but the petitioners have been deprived of their right of standi to continue participating in legal proceedings, due to the application of the restriction imposed by article 350 of the Code of Criminal Procedure of the Province of Buenos Aires in force at the time[FN5]. Furthermore, that same court decided on December 29, 1999, that the judgment and the conviction issued against the petitioners was definitive, and it has ordered its enforcement.

[FN5] Article 350º: “This [for reversal of decision based on contradictory doctrine] is admissible in all cases where the final judgment revokes an acquittal or imposes a punishment greater than three years imprisonment.”

---

c. The disciplinary action against the judges

14. Towards the end of 1990, the petitioners filed for a disciplinary action against Judge María Inés Oderay Longhi and the judges of the First Court of the Chamber of Appeals in and for the Judicial Department of San Martín. On April 16, 1991, the Jurado de Enjuiciamiento de Magistrados of the Province of Buenos Aires issued a decision acquitting all the judges. The petitioners lodged a recurso de queja before the Supreme Court of Buenos Aires, which was

denied on June 11, 1991. A similar appeal was submitted before the Supreme Court of Argentine, but was turned down on April 21, 1992.

B. Position of the Petitioners

15. They submit that the decision of Judge María Inés Oderay Longhi to order the auditing of the compensatory installments already paid, and to suspend de facto the execution of the award granted by her predecessor on June 12, 1987, "exceeded her competence since a final judgment had already been issued and there were no facts in dispute." They also maintain were neither heard in their capacity as party, nor permitted to exercise the rights of defense, nor allowed either to participate actively in, or to monitor, the audit.

16. They report that they lodged motions "for clarification, for appeal, recusations, and motions to challenge jurisdiction and to request dismissal for lack of jurisdiction," as well as the recurso extraordinario and de queja before the Supreme Court of Justice of Argentine, all of which were unsuccessful.

17. They claim that there was interference by the Provincial Executive Branch in the judicial processing of the judges disciplinary. They also contend that the process was contrary to the relevant law (provincial law 8085); that the charge was rejected in limine, declaring their attitude "as reckless and malicious"; and "they were ordered to pay exorbitant professional fees for the justices of the case". Also, they contend that their appeals were rejected at every competent level. They further argue that in the decision handed down by the Jury de Enjuiciamiento de Magistrados, the amount established as the professional fees for each of its members was high (equivalent to US$ 1,800.00), exceeding the usual judicial practice and the standards of reasonableness. Moreover, as a result of the adverse sentence, they were sued for damages by two of the judges against whom they brought charges (Olcese and Uhart), who alleged psychological harm and injury to their reputation, thus "obtaining attachments of the petitioners' properties for more than US$500,000. This is an amount without precedent in Argentine case law, and is interpreted by the petitioners as a deterrent measure and a corporative reaction."

18. They question the grounds for the criminal charges brought against them. They claim that the compensatory payments were requested by them, latter ultimately --by its approval--made those settlements legally valid. They further allege as follows: that they were convicted for a nonexistent crime; that in the criminal trial they were not allowed to cross-examine the "various witnesses" called by the court; that the experts who performed the audit "acknowledged in court that they had made a mistake, but that the judge failed to take that admission into account"; that a cumulative penalty was imposed which actually was tantamount to a parallel principal one, with the aggravating circumstance that said penalty was not sought by the prosecution, was not the subject of debate, and was not supported by evidence submitted in the proceeding, that the petitioners were not given an opportunity to defend themselves against its imposition, and it expressly violates the guarantees of due process; that they could not appeal their conviction, since Article 350 of the Code of Criminal Procedure of the Province of Buenos Aires, in effect at that time, was applied, by virtue of which the criminal proceedings against the other codefendants currently continues before the Supreme Court of Buenos Aires, "[while] we are no longer considered a party to them [and so we do not have the legal capacity and right of defense

in these proceedings]", and the same court ruled on December 29, 1999 that the conviction ruling has become res judicata; and, that judicial approval of the audit report in the civil proceeding was revoked by the Chamber of Appeals for Civil Matters, situation which might imply the removal of the basis for their conviction.

C. Position of the State

19. It has centered its position on arguing that the case is inadmissible, both on the basis of failure to exhaust domestic remedies in accordance with the requirements laid down in Article 46(1)(a) of the Convention, and in conformity with the provisions contained in Article 47(d) of the Convention. In light of the fact that the substance of the case is being examined and decided by the judicial authorities of Argentina, and that certain of its aspects do no longer fall within the competence of the Commission, the State has not established its position on the substance of the case, or contested in detail the petitioners' allegations. In its letter of September 17, 1997, it "reserved its right to consider in future the issues of fact and of law involved in the case, if it becomes necessary."

20. It believes that there is a direct link between the merit of the allegations on the supposed violations of the right to a fair trial and the requirement of exhaustion of domestic remedies. "It is clear that the exercise of this right [to a fair trial] is improved through the ample possibility of reviewing all decisions issued throughout court proceedings, by means of the review organs [within the domestic jurisdiction]."

21. It submits the following:

As to the nature of the domestic remedies to be pursued [which in the opinion of the State were not exhausted by the petitioners up to the date of the communication in question, i.e., January 4, 1999], a juris tantum presumption, according to which remedies exist and are adequate and effective, is recognized, except in the case of specifically established exceptions. […] Thus, in this petition, […] it is a fact that none of them has been omitted by the complainants [petitioners].

IV. ANALYSIS

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

22. The Commission is competent on the case. The facts alleged by the petitioners refer to the purported violation of the rights of individuals resulting from actions imputable to Argentina that supposedly occurred within its territorial jurisdiction after the Convention entered into force for the State.

23. As far as the civil proceeding is concerned, the Commission takes note of the fact that the plaintiff is Amílcar Cascales and that the petitioners acted as his attorneys. However, the audit performed within that proceeding was used as the basis for the criminal action carried against the petitioners. As a result, the Commission considers that the scope of its competence to consider

the civil proceeding is limited exclusively to the aforesaid audit report, its revocation, and its replacement by another one, since it considers that the effects of those incidents should be consistent with the decision made in the criminal proceeding.

B. Other admissibility requirements

a. Exhaustion of domestic remedies

24. The instant case concerns three different judicial proceedings which have taken place within Argentina's jurisdiction. The following analysis examines fulfillment of the admissibility requirements in respect of each of those judicial proceedings.

25. With reference to the civil proceeding, the State holds that "the judgment of June 12, 1987 is final and is favorable to the complainants [petitioners]."[FN6] With regard to the enforcement proceeding, the Commission finds that it is merely a procedural stage derived from the main sentence that has acquired the force and effect of res judicata. Moreover, the criterion that a final judgment and its enforcement be procedurally joined forms part of the right to an effective recourse provided by Article 25 of the Convention.[FN7] Accordingly, the recognition by the State applies as an extension to the enforcement proceeding, particularly since the State has made no distinction between the two. Consequently, domestic remedies are exhausted in respect of the principal and accessory sentences.

[FN6] Communication of the State dated July 6, 1994, reaffirmed in this respect by the petitioners.

[FN7] The jurisprudence of the European Court also reaffirms the criterion that a final judgment and its enforcement are procedurally joined for the purposes of determining fulfillment of the requirement with respect to the deadline for lodging petitions with the international organ. See, inter alia, Silva Pontes v. Portugal, Judgment of 23 March 1994, Series A, Nº 286-A, para. 33; and the Guincho Case, Judgment of 10 July 1984, Series A, Nº 81, para. 29.

---

26. As regards the criminal trial, the Supreme Court of Justice of Argentine has dismissed, by its decision of March 31, 1999, the recurso de hecho filed by the petitioners, and they are legally impeded by article 350 of the Code of Criminal Procedure of the Province of Buenos Aires (then in force) from participating in the continuation of the proceeding against the other codefendants. The Supreme Court of Buenos Aires has decided on December 29, 1999, that the conviction of the petitioners has become res judicata. Consequently, domestic remedies in this respect have been exhausted.

27. As to the disciplinary action before the Jury de Enjuiciamiento de Magistrados, the State, in its communication of July 6, 1994, has admitted the fulfillment of the requirement in question. It refers to the decision of the Supreme Court of Justice of Argentine dated April 21, 1992, which rejects the recurso de queja filed by the petitioners against the decision of the Supreme Court of Buenos Aires.

b. Deadline for lodging the petition

28. The petition was admitted by the Commission on June 2, 1997. The declaratory stage of the civil proceedings was exhausted with the judgment of June 12, 1987, and its execution was halted by the judicial order issued on August 31, 1992, a situation which has continued up to the date of this report.[FN8] According to any standards of analysis, the mere fact that this civil proceeding was instituted in 1973, and that twenty-seven years later it has not yet been fully executed, and that the enforcement process has been impeded by an act imputable to the State for about seven and a half years, justifies the application of the exception to this admissibility requiremen established in Article 46(2)(c) of the Convention.

[FN8] See above, para. 10.

---

29. As for the criminal trial, domestic remedies were exhausted on March 31, 1999, subsequent to the date on which the Commission admitted the petition for processing. Consequently, the requirement established in Article 46(1)(b) of the Convention has been met in this regard.

30. Concerning the disciplinary action against the judges, the remedies under domestic law were exhausted with the ruling of the Supreme Court of Justice of Argentine dated April 21, 1992. Hence, the admissibility requirement set forth by Article 46(1)(b) has lapsed, and consequently the case in inadmissible on this point.

c. Duplication of proceedings and res judicata

31. The State has repeatedly held that the fundamental aspects of the petition are inadmissible “since the petition is substantially the same as the one [lodged on September 29, 1992] previously examined and decided on by the Commission”. To support this submission, the State invokes Article 39 of the Rules of Procedure of the Commission, which defines the scope of Article 47(d) of the Convention.

32. The supposed decision by the Commission invoked by the State, is proven--in its opinion--by the two communications sent by the Commission’s Executive Secretariat to the petitioners, dated September 27, 1995 and December 19, 1996. In these communications, the petitioners are advised that the Commission cannot continue to process the petition “[because] the facts related in your communications do not characterize a violation of any right protected by the Convention […].”

33. The Commission notes that after the dates of the above-mentioned communications of its Executive Secretariat, various new facts relevant to the case have come to light, both within and as direct actions of Argentine’s jurisdiction. On such basis, the Commission opened the case on June 2nd 1997.

34. The exception based on "new facts" is frequently employed in the procedural practice of the Commission; however, there is a lack of precedents to define its scope. In the procedural practice of the European system of human rights, "declarations of inadmissibility on the ground of the identical character of two or more cases submitted to the Commission do not occur frequently".[FN9] Furthermore, "[if] an application has been declared non-admissible because of non-exhaustion of local remedies [the] fact that the remedy concerned has finally been exhausted constitutes 'relevant new information' which precludes the Commission from declaring the application inadmissible as being substantially the same [as another examined previously …]".[FN10] When excessive delay of domestic remedies is alleged, the time elapsed between the first and second petition "in itself, constitutes a new fact."[FN11]

[FN9] Van DIJK, p. and von HOOF, G.J.H. (1998) Theory and Practice of the European Convention on Human Rights. The Hague, Kluwer and SIM, 3rd. edition; p. 112.
[FN10] ZWART, Tom (1994) The Admissibility of Human Rights Petitions. The Case Law of the European Commission of Human Rights and the Human Rights Committee. Boston, Martinus Nijhoff; p. 165.
[FN11] Ibid.

---

35. In the case under review there is no evidence that it is substantially the same than a previous petition lodged before another competent supranational organization. The Commission concludes that the case under review contains references to new facts that make it different from the previous petition lodged on September 29, 1992. The admissibility requirement stipulated in Article 47(d) of the Convention is therefore fulfilled.

36. The Commission further concludes that there is no evidence that the case is pending in another international proceeding for settlement, as stipulated in Article 46(1)(c) of the Convention.

d. Characterization of the alleged facts

37. The facts alleged by the petitioners are described in considerable detail and supported with documents. By contrast, the State has still neither disputed the facts submitted by the petitioners, nor presented to the Commission information that makes it possible to question their veracity. Furthermore, the Commission notes that the State has not expressly sustained that the facts alleged by the petitioners do not either tend to establish, nor actually establish, violations of the rights guaranteed by the Convention.

38. The Commission finds that, should the facts alleged by the petitioners be confirmed, the case, insofar as its civil and criminal proceedings are concerned,[FN12] could meet the standard of admissibility provided in Article 47(b) of the Convention, on the grounds of tending to establish violations of Articles 8, 9 and 25 of the Convention.

[FN12] Supra, paras. 8 to 10, and 11 to 13, respectively. In the matter of the civil proceeding, consideration should be given to the scope of the Commission's competence as defined by it in paragraph 23 above.

V. CONCLUSIONS

39. The Commission concludes that it is competent to seize this case, in matters related to the civil proceeding (exclusively with regard to the audit report, its revocation, and replacement) and to the criminal proceeding, and that it is admissible on these counts, pursuant to Articles 46 and 47 of the Convention. Also, the Commission concludes that it is not competent to take cognizance of the allegations related to the disciplinary action against the judges in the Jury de Enjuiciamiento de Magistrados, since the admissibility requirement set forth in Article 46 (1)(b) of the Convention has not been met.

Based on the foregoing factual and legal arguments and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare admissible the instant case in regards to the alleged violations of Articles 8, 9, and 25 of the Convention related to the criminal proceeding, and to the part of its civil proceeding concerning exclusively the audit report, its revocation, and replacement; and to declare it inadmissible in relation to the disciplinary proceedings against the judges.
2. To notify the parties of this decision.
3. To continue to examine the merits of the case.
4. To place itself at the disposal of the parties to facilitate the reaching a friendly settlement based on respect for the human rights enshrined in the Convention, and to invite the parties to express their opinions on this regard; and
5. To publish this decision and include it in the Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., March 7, 2000. (Signed): Hélio Bicudo, Chairman; Claudio Grossman, First Vice-Chairman; Commissioners, Robert K. Goldman, Marta Altolaguirre, Robert K. Goldman, Peter Laurie and Julio Prado Vallejo.