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Institution: Inter-American Commission on Human Rights  
File Number(s): Report 67/00; Case 12.267  
Session: Hundred and Eighth Regular Session (2 – 20 October 2000)  
Title/Style of Cause: Fernando Ribadeneira Fernandez Salvador v. Ecuador  
Doc. Type: Decision  
Decided by: Chairman: Helio Bicudo;  
First Vice-Chairman: Claudio Grossman;  
Second Vice-Chairman: Juan E. Mendez;  
Commissioners: Marta Altolaguirre, Robert K. Goldman, Peter Laurie, Julio Prado Vallejo  
Dr. Julio Prado Vallejo, an Ecuadorian national, did not participate in the discussion of this case in accordance with Article 19 of the Commission's Regulations.  
Dated: 3 October 2000  
Citation: Fernandez Salvador v. Ecuador, Case 12.267, Inter-Am. C.H.R., Report No. 67/00  
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## I. SUMMARY

1. On January 14, 2000, the Inter-American Commission on Human Rights (hereinafter “the IACHR” or “the Commission”) received a complaint submitted by Fernando Ribadeneira Fernández Salvador (hereinafter “the petitioner”) against the Republic of Ecuador (hereinafter “the State” or “Ecuador”), according to which the failure of the Superintendency of Banks (an agency of the State) to control the Sociedad Financiera Principal led to the bankruptcy of that corporation. The petitioner is the chairman of the Board of Creditors and claims to have suffered a personal loss of USD\$600,000. He alleges violations of Articles 8 (right to a fair trial), 21 (right to property), and 25 (right to judicial protection) of the American Convention on Human Rights (hereinafter “the American Convention”), all in breach of the obligations contained in Article 1(1) thereof. In response, the State maintains that internal remedies have not been exhausted and requests that the IACHR dismiss the complaint for that reason and wait for the resolution of the case in the domestic courts.

2. In this report, the IACHR analyzes the information available to it and concludes, in accordance with the American Convention, that the petitioner has not exhausted the remedies provided by domestic law and that the exceptions set forth in Article 46.2 of the aforesaid international instrument are not applicable. Consequently, the Commission decides to declare the case inadmissible under Article 47.a of the American Convention and Article 31 of the Commission's Regulations, to transmit this decision to the parties, to make it public, and to order its publication in its Annual Report.

## II. PROCESSING BY THE COMMISSION

3. On January 14, 2000, the IACHR received the complaint in the case at hand. On April 20, 2000, the Commission proceeded to open the case and transmitted the relevant notes to the State and the petitioner. On August 30, 2000, the State submitted its reply.

## III. POSITIONS OF THE PARTIES

### A. Position of the petitioner

4. The petitioner claims that through the negligence of the Superintendency of Banks, an agency of the State responsible for controlling the operations of financial institutions in Ecuador, the Sociedad Financiera Principal was bankrupted, causing him a personal loss of USD\$600,000.

5. As a result of this, on December 4, 1998, the petitioner filed suit against the Superintendency of Banks in the domestic courts, seeking payment of damages for the harm caused by this lack of control over the financial company. On December 22, 1998, the Eleventh Civil Judge in Pichincha began to assess the suit and summoned the Superintendency of Banks to appear. On May 19, 1999, the petitioner presented an amendment to the suit, providing additional evidence that had not been considered in his earlier submission. After this amendment was presented, the Judge assessed it and summoned the Superintendency and the nation's Attorney General to appear. The petitioner claims that when his complaint was placed before the IACHR, notification of the proceedings (the first procedural step in the lawsuit) had not yet been served.

6. The petitioner claims that this delay in serving notice has hindered the defense of his rights and that the judiciary is to blame for the delay. He also claims his suit for damages is about to be affected by a statutory limitation, in that the Ecuadorian Civil Code stipulates that the right to take action expires four years after the harmful act, action, or failure to act. Said expiration is interrupted only once notification of the case has taken place.

7. The petitioner claims that his right to resolution within a reasonable period of time, set forth in Article 8 of the American Convention, has not been protected. In the case, he says, "the proceedings have exceeded this reasonable time, particularly considering that the matter is in no way complex, given the current state of the suit; the plaintiff has in no way caused the delay; rather it has been the behavior of the judicial authorities that has caused the delay. Particularly if we see that an action that should take no longer than three days has taken seven months."

8. The petitioner also claims that the State is violating Article 21 of the Convention as regards both the right of ownership "of the goods denied to him as a result of the State's inaction and the right of ownership of the personal right to seek amends from the originator of the harm." He states that the violation of Article 25 has arisen from "the delay in which the judiciary is incurring." The petitioner further claims that this delay could also "make it impossible to obtain judicial protection, on account of the statutory limitation that could apply to the amended action."

9. Finally, the petitioner maintains that the delay in the processing of the suit by the domestic courts causes the provisions of Article 46(2) to apply, under which the exhaustion of domestic remedies is not necessary.

#### B. Position of the State

10. According to the State, the petitioner filed suit against the Superintendency of Banks on December 7, 1998, seeking payment of USD\$1,300,000 as damages for the alleged negligent attitude of that agency in failing to maintain due control over Sociedad Financiera Principal.

11. The State claims that after the original suit was presented on December 7, 1998, the Notifications Chamber summoned the Superintendent of Banks, Dr. Jorge Egas Peña, on January 27 and February 1 and 3, 1999, and the nation's Attorney General on March 19, 1999. On March 1, the Superintendent replied to the suit and proposed the peremptory and dilatory exceptions he deemed applicable to the case. The Judge assessed and admitted this response. On May 19, 1999, Dr. Alejandro Ponce Villacís, the petitioner's attorney, then amended the suit. In the amended suit, the petitioner sought USD\$1,300,000 as damages, USD\$1,300,000 for pain and suffering, and USD\$1,300,000 for the harm caused to his personal life plan, giving a total of USD\$4,000,000. After the petitioner amended his suit, the Judge ordered, on July 12, 1999, that the defendants once again be summoned to appear and, the State claims, since that date, "neither the plaintiff nor his attorney have submitted any petitions or granted the legal powers necessary to proceed with notification."

12. The State also claims that the proceedings have not yet concluded and that the domestic courts must resolve them in accordance with law "and such a resolution, regardless of whether it is favorable or unfavorable, is the best way to resolve the petitioner's situation." The State also notes that according "to the European Court of Human Rights, the reasonableness of a measure or a period of time must be seen in its own specific context, and so the State has resolved this case in a period of time commensurate with the proceedings in question, within the possibilities available to the State."

13. The State points out that the resources provided in Ecuadorian procedural law are available to the petitioner and that he could invoke them if in disagreement with the ruling of the lower-court judge. Thus, Article 237 of the Code of Civil Procedure states that: "An appeal is a claim that one of the litigants or another interested party makes to a higher judge or court, seeking the nullification or amendment of a decree, act, or ruling of a lower authority." The State also notes that the petitioner could seek the nullification of a sentence handed down by the corresponding chamber of the Superior Court in cases in which judges have incurred in legal or procedural errors.

#### IV. ANALYSIS

A. The Commission's competence *ratione materiae*, *ratione personae*, and *ratione temporis*

14. The Commission has prima facie competence to examine this petition. The petitioner is entitled to appear and has made allegations regarding a failure to comply with provisions of the American Convention by agents of a state party thereto. The incidents alleged in the petition occurred at a time when the State was under the obligation of respecting and guaranteeing the rights set forth in the Convention. Ecuador deposited its instrument of ratification for the American Convention on December 28, 1977. The events of this case took place between 1996 and 1998.

B. Requirements for the admissibility of the petition

a. Exhaustion of domestic remedies

15. As the IACHR has already stated, “The rule of prior exhaustion of domestic remedies is based on the principle that a defendant state must be allowed to provide redress on its own and within the framework of its internal legal system.”[FN1] The Court and the Commission have said, on several occasions, that when a State maintains that a petitioner has not met the requirement of first exhausting domestic remedies, it is required to indicate which remedies are available and effective.[FN2] The Court has also said that, “once a State Party has shown the existence of domestic remedies for the enforcement of a particular right guaranteed by the Convention, the burden of proof shifts to the complainant, who must then demonstrate that the exceptions provided for in Article 46(2) are applicable.”[FN3]

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[FN1] IACHR, 1996 Annual Report, Report No. 39/96, Case 11.673, Santiago Marzioni (Argentina), October 15, 1996, paragraph 49, p. 85.

[FN2] See: Inter-Am.Ct.H.R., Loayza Tamayo Case, Preliminary Exceptions, Judgment of January 31, 1996, paragraph 40; and IACHR, 1997 Annual Report, Report No. 28/98, Case 11.625, María Eugenia Morales de Sierra (Guatemala), March 6, 1998, paragraph 28, p. 150.

[FN3] Inter-Am.Ct.H.R., Advisory Opinion OC-11/90 Exceptions to the Exhaustion of Domestic Remedies (Arts. 46.1, 46.2.a, and 46.2.b of the American Convention on Human Rights), requested by the Inter-American Commission on Human Rights, August 10, 1990, paragraph 41.

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16. The State claims that the remedies suitable for resolving the alleged illicit actions involved in this case are the following: an appeal against the ruling of the lower-court judge, or the nullification of the sentence by the Superior Court.

17. The Commission notes that the petitioner has not challenged the State’s claim regarding the availability of the remedies provided by domestic law for seeking said protection and, consequently, the exceptions set forth in Article 46.2, paragraphs (a) and (b) are not applicable. In such cases, the burden of demonstrating that there was an unwarranted delay in resolving those remedies falls on the petitioner, in accordance with the terms of Article 46(2)(c) of the American Convention.

18. The Inter-American Court has said that it “shares the view of the European Court of Human Rights, which in a number of decisions analyzed the concept of reasonable time and decided that three points should be taken into account in determining the reasonableness of the

time in which a proceeding takes place: a) the complexity of the case, b) the procedural activity of the interested party, and c) the conduct of the judicial authorities.”[FN4]

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[FN4] Inter-Am.Ct.H.R., Suárez Rosero Case, Judgment of November 12, 1997, paragraph 72.

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19. The Commission understands that the complexity of a case does not fully justify an unwarranted delay in judicial proceedings. The Commission refrains from evaluating the complexity of the matter before the Ecuadorian domestic courts because that information is not available to it. However, it is clear that the petitioner’s behavior made a significant contribution to the slowness of the proceedings. After the original suit was brought before the courts in December 1998, the domestic judge issued the corresponding summonses in January, February, and March. In May 1999, the petitioner submitted an amended version of his suit and, on July 12, 1999, the Court ordered the defendants to be summoned anew and, since that time, neither the petitioner nor his attorney, Dr. Alejandro Ponce Villacís, have presented any petitions or carried out the requisite legal procedures necessary for the summonses to be issued.

20. In this case, according to the information submitted to the Commission, it can be seen that the petitioner has obligations pending with the Ecuadorian courts before the proceedings can be concluded. As a result, the Commission finds that seven months, in light of the characteristics of this case, cannot be considered unreasonable.

21. Analyzing the information provided by the two parties reveals that the petitioner has not exhausted the remedies available under domestic Ecuadorian law and that he has not presented evidence indicating an unjustified delay in the resolution of those remedies.

## V. CONCLUSIONS

22. The IACHR has determined that the petition does not meet the requirement set forth in Article 46(1)(a) of the American Convention and that the information submitted by the parties does not allow application of the exceptions provided for in Article 46(2) thereof. Consequently, the Commission concludes that the petition is inadmissible, in accordance with Article 47(a) of the American Convention.

23. Based on the foregoing considerations of fact and law,

## THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS DECIDES:

1. To declare this case inadmissible.
2. To give notice of that decision to the petitioner and to the State.
3. To publish this decision and to 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 third day of October, 2000. (Signed): Hélio Bicudo, Chairman, Dean Claudio Grossman, First Vice-Chairman; Juan Méndez, Second Vice-Chairman; Commissioners: Marta Altolaguirre, Robert K. Goldman, Peter Laurie and Julio Prado Vallejo.