

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 68/00; Case 11.720
Session:	Hundred and Eighth Regular Session (2 – 20 October 2000)
Title/Style of Cause:	Aldemaro Romero Diaz and Aisur Ignacio Agudo v. Venezuela
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
Dated:	3 October 2000
Citation:	Romero Diaz v. Venezuela, Case 11.720, Inter-Am. C.H.R., Report No. 68/00, OEA/Ser.L/V/II.111, doc. 20, rev. (2000)
Terms of Use:	Your use of this document constitutes your consent to the Terms and Conditions found at www.worldcourts.com/index/eng/terms.htm

I. SUMMARY

1. On December 18, 1996, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the Inter-American Commission”) received a petition dated December 16 of that year lodged against the Republic of Venezuela (hereinafter “the State” or “Venezuela”) by Rights International, The Center for International Human Rights Law, Inc. (hereinafter “the petitioner”), based on Article 44 of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) and the American Declaration of the Rights and Duties of Man.

2. The petition claims that the State violated the following articles of the American Convention: 5(1) (Right to Humane Treatment); 7(6) (Right to Personal Liberty); 8 (Right to a Fair Trial); 11(1) (Right to Privacy); 13 (Freedom of Thought and Expression); 24 (Right to Equal Protection); and 25 (Right to Judicial Protection) in connection with Article 1(1) (Obligation to Respect Rights), as a result of alleged measures taken against Messrs. Aldemaro Romero and Aisur Ignacio Agudo, two marine biologists who witnessed the killing of dolphins and denounced it as common practice among Venezuelan fishermen. According to the petitioner’s brief, the above denunciation made to the Venezuelan press and authorities, as well as to the international press, prompted the State to take revenge by indicting them and convicting them of the very crime that they had denounced. This indictment and conviction on the part of the State caused both to flee the country with their families. They are currently living abroad.

3. From its examination of the admissibility requirements, the Commission finds the petition to be inadmissible in accordance with Article 46(1)(a) of the American Convention and Article 37 of the Regulations of the Commission.

II. PROCESSING BY THE COMMISSION

4. On January 27, 1997, the Commission began to process the case and requested the State for information on the facts alleged by the petitioner. On April 2 and May 15, 1997, the State made applications for extensions of the period for presenting its reply in the instant case. On July 7 and October 22, 1997, the Commission reiterated to the State its request for such information as it deemed pertinent, advising it of the possibility of application of Article 42 of the Commission's Regulations.

5. On October 29, 1997, the State presented its reply (dated October 23 of that year), arguing that it was inadmissible in accordance with Article 46 of the American Convention. The petitioner submitted comments on the State's reply and information was subsequently received from both parties. The Commission received the petitioner's comments and supplementary information on December 8, 1997 and July 27, 1998, respectively. The State presented its reply to the petitioner's comments on April 22, 1998.

6. On March 2, 1999, in accordance with Article 48(1) of the Convention and Article 45 of its Regulations, the Commission placed itself at the disposal of the parties with a view to reaching a friendly settlement of the matter. On April 26, 1999 the petitioner presented its acceptance of the Commission's offer, together with a proposed arrangement which it would be willing to accept. To date the State has presented no comments or reply in that respect.

III. POSITIONS OF THE PARTIES

A. The petitioner

7. According to the petition, in February 1993, Dr. Aldemaro Romero Díaz and Professor Aisur Ignacio Agudo Padrón, two prominent marine biologists, filmed and photographed Venezuelan fishermen harpooning a dolphin/porpoise in waters off the state of Sucre. In the same video the fishermen said it was common practice among Venezuelan fishermen to use it as shark bait, which led Dr. Romero to denounce the killing in a press conference on May 6, 1993, where he used the video as a key piece of evidence to support his claim.

8. According to the petitioner, on May 11, 1993, the two biologists sent a letter, together with the video and photographs, to the Attorney General complaining about the killing of porpoises and suggesting corrective measures designed to encourage their conservation. The petitioner adds that in this letter they did not request punitive measures for the fishermen who appear in the video and that their efforts provoked scant reaction from the Venezuelan government.

9. The petitioner says that in October 1993, Messrs. Romero and Agudo testified before the Environment Commission (Comisión del Ambiente) of the Venezuelan Congress and presented the video and proposed conservation measures that they had prepared. On February 2, 1994 the biologists testified in a court of Carúpano and submitted documents and evidence regarding the killing of dolphins in Venezuela.

10. The videotape was later released in the United States and, according to the petitioner, the Venezuelan Government, embarrassed by the negative publicity, accused Dr. Romero and Professor Agudo of having bribed the fishermen and directed them to kill the dolphin, which they themselves filmed.[FN1] The petitioner claims that the government altered the original videotape and “took images and dialogue out of context” in order to support “trumped up criminal charges alleging that Dr. Romero and Professor Agudo violated a Venezuelan law” that prohibited the killing of dolphins.

[FN1] According to the petition, the story regarding this matter was carried by the television network CNN and newspapers the Wall Street Journal and the American Journal and that, in consequence, the Venezuelan Embassy in Washington and the Consulate in Miami received over 20,000 letters from the American public protesting against such actions. Petition of December 16, 1996, p. 2.

11. The petitioner says that the alleged victims in this case had been unable to obtain a copy of the indictment against them until March 22, 1996, when the Embassy of Venezuela in Brazil issued a press release saying that the alleged victims had violated Article 59 of the Venezuelan Criminal Statute on the Environment (Ley Criminal sobre el Ambiente)[FN2].

[FN2] The aforementioned Article 59 provides:

Hunting in and destruction of special areas and natural ecosystems. Any person who hunts wild animals or destroys or causes damage to resources that provide food or shelter thereto in national parks, natural monuments, animal refuges or sanctuaries, or natural ecosystems, shall be sentenced to three (3) to nine (9) months’ imprisonment (arresto) in a local detention facility and a fine of three hundred (300) to nine hundred (900) days’ pay at the minimum wage.

The sentence shall be doubled and the arresto changed to imprisonment (prisión) in a national detention facility when such offenses are committed by means of fires, chemical substances, unauthorized hunting weapons, or any other method or instrument that increases the suffering of the prey; or against animals protected by a hunting ban, populations of endangered species, or populations that, without being endangered, become endangered as a result of the offense, regardless of where it was perpetrated.

Single Paragraph:

Any person who, for commercial gain, hunts wild animals or collects natural products obtained therefrom without the necessary license, exceeds the permitted hunting quota, or hunts during a close season, shall be sentenced to nine (9) to fifteen (15) months’ imprisonment (prisión) in a national detention facility and a fine of nine hundred (900) to fifteen hundred (1500) days’ pay at the minimum wage.

12. According to the petition, the Government launched a defamatory press campaign attacking the activities and scientific reputation of the two biologists, while the Venezuelan Consulate in Miami, in response to the huge outpouring of criticism it received, sent out letters saying that the Venezuelan Government had found evidence that proved “beyond a shadow of

doubt” that the video had been “fabricated and premeditated”. The Venezuelan Minister of Foreign Affairs and the Governor of the State of Sucre supported this position and the Governor later called for the biologists to be tried for treason.

13. The petitioner says that the press in Venezuela, taking their cue from the Government, have pursued the theory that Dr. Romero conspired with the United States and Europe, as well as with tuna fishing companies, to prevent the lifting of the embargo imposed in 1991 by the United States on Venezuelan tuna. The petitioner also considers that the State’s persecution violated the freedom of expression of Dr. Romero and Professor Agudo.

14. As a result of the foregoing, Dr. Romero and his family started to receive death threats in Venezuela against them and, on February 19, 1994, he fled with his family to the United States.[FN3] In April 1994 a judge of the State of Sucre issued a warrant for the arrest of Dr. Romero and Professor Agudo.

[FN3] The petitioner says that, furthermore, in Miami, USA, he met Mr. Eduardo Betancourt, who, as representative of the Venezuelan Consulate in Miami, asked him to surrender himself to the authorities in Venezuela and informed him of a plan that the State had to kidnap him and return him to the country for trial. In light of this information he says he reported the incident to the FBI. Some months after that meeting, he met a person who identified himself as a Venezuelan journalist; however, his enquiries showed that no journalist with such a name existed, whereupon Doctor Romero again went to the FBI to report the incident. Dr. Romero believes the Venezuelan authorities took illegal measures with the aim of taking him back to Venezuela where his rights would not be respected.

15. On April 12 and 13, 1994, the Venezuelan police visited the home of Professor Agudo, as well as that of his parents and sisters and made threats. These threats prompted Mr. Aisur Ignacio Agudo to go into hiding and, according to the petition, led Professor Agudo’s father to commit suicide on May 14, 1994. Subsequently, Professor Agudo’s wife, who suffered from a chronic heart complaint, died on April 12, 1995, as a result of a decline in her health. Professor Agudo’s mother and sisters continued to receive threats until April 1996.

16. The petitioner also says that the father of Dr. Romero made a series of attempts to resolve the case against his son and to obtain legal representation for him in Venezuela; however, these efforts have not yielded any positive results. The matter is made worse by the fact that the “Venezuelan courts are beset with serious problems that stem from corruption and political interference in the affairs of the judicial system” and cause the system to be ineffective as well as “corrupt and biased”. [FN4]

[FN4] In that regard, pages 7 and 8 of the petition of December 16, 1996 mention that evidence of this situation has been disseminated by the United States Department of State, Americas Watch, and the World Bank on various occasions.

17. The petitioner claims that prison conditions in Venezuela are dangerous and the Venezuelan police frequently kill and torture people in suspicious and inexcusable circumstances, sometimes to obtain information. Nevertheless, such abuses committed by State officials enjoy impunity in Venezuela. The petitioner argues that this situation, along with the threats and partiality of Venezuelan officials, have made it impossible for the two biologists to defend themselves against the charges against them.

18. According to the petition, the State has, to the detriment of the alleged victims violated Articles 5(1) and 11(1) as a result of the false charges, the official international campaign of defamation, and the threats against Messrs. Romero and Agudo. The petition also claims that the State violated Articles 7(6), 8, 24 and 25 by not permitting the alleged victims equal access to a remedy under domestic law and denying them their rights of representation, to an impartial and independent tribunal, and to be presumed innocent; and, finally, Article 13, with respect to the freedom of expression of the biologists.

19. As to the exhaustion of domestic remedies, the petitioner says that the exceptions set forth in Article 46(2) of the Convention are applicable in this case, since the domestic remedies are ineffective and inadequate and do not afford due process of law for the alleged victims' petition in Venezuela. The reason for the foregoing is that the petitioner regards it as a proven fact that the State presumed the guilt of Messrs. Romero and Agudo, refused to notify them of the charges against them, and denied them the right of defense.[FN5]

[FN5] In that respect, the petitioner mentions that the Commission has found that if the domestic agency that investigates the petition is, rather, the body responsible for the alleged violations, an exception to the exhaustion rule would apply. Petition of December 16, 1996, p.13.

20. The petitioner adds that if a remedy in a given case is not effective then it is not necessary to exhaust it and mentions that in the instant case the impossibility to overcome the obstacles and procedures that the State used to hamper Dr. Romero render the Venezuelan remedies insufficient for the case in hand. Even if Dr. Romero and Professor Agudo were to return to Venezuela, the petition says, there is a reasonable likelihood that the remedies under Venezuelan law would be ineffective for protection of the alleged victims' rights in this case. The petition further clarifies that the two are not fugitives but refugees living abroad.[FN6]

[FN6] The petitioner mentions the Godínez Cruz Case against Honduras and refers to the UN Human Rights Committee, to different reports of the Inter-American Commission, and to case law of the European Court of Human Rights.

21. The petitioner holds that in the event of a clear lack of judicial guarantees and of effective remedies, the Commission, on taking up an objection asserting non-exhaustion of domestic

remedies, may also decide on the merits at the same time, a situation the petitioner considers analogous to the instant case.[FN7]

[FN7] In this connection, the petition mentions the Velásquez Rodríguez Case against Honduras. Petition of December 16, 1996, p.16.

22. As for the deadline for presentation of the petition, the petitioner says that Articles 34(2) and 38(2) of the Commission Regulations apply because it is not possible to determine a reasonable period from the date on which the human rights of Messrs. Romero and Agudo were violated; and there is no court decision from which to measure such a period. The petitioner adds that the instant petition is not pending in another international proceeding for settlement.

B. The State

23. The State requests that the petition be found inadmissible because the facts stated by the petitioners do not tend to establish a violation of the rights guaranteed by the Convention inasmuch as they are not true; and for failure on the part of Messrs. Romero and Agudo to exhaust the remedies under domestic law.

24. The State says that on January 7, 1994 the Coastguard of the City of Cumaná, Sucre State, informed the Second Court of First Instance for Criminal Matters of Sucre Judicial District and the Attorney General's Office that a preliminary inquiry had been opened, in pursuance of Article 75(c) of the Venezuelan Code of Criminal Procedure, into an offense categorized in the Criminal Statute on the Environment (Ley Penal sobre el Ambiente) in accordance with the Law on Protection of Wild Animals (Ley de Protección de la Fauna Silvestre), as a result of the screening of a video made by the Fundación Bioma on the killing of dolphins on the eastern coast of Venezuela, which was broadcast in the United States by the television network CNN.

25. The State says it went on to conduct all the necessary proceedings in accordance with Article 90 of the Venezuelan Code of Criminal Procedure in order to prepare a record of the perpetration of the punishable acts. In the course of the aforesaid enquiry, the fishermen who were filmed in the abovementioned video gave statements, two of them saying that the biologists told them they were carrying out a research project and as part thereof they asked them to harpoon a dolphin for research that was going to be conducted in Caracas.

26. Based on the testimony of the fishermen who accompanied Messrs. Romero and Agudo, the latter were summoned to give statements on February 2, 1994. On March 16, 1994, further testimony was received that incriminated the alleged victims in the killing of a dolphin for research. As part of the enquiry, the State says that an expert was called, who stated that examination of the video showed that the way that the dolphin was harpooned was not the most suitable and that it could not be said to be a routine practice of the fishermen.

27. Based on the foregoing, on April 11, 1994, a warrant was issued for the arrest of Messrs. Romero and Agudo for incitement to the crime of hunting and killing a dolphin under Article 59

of the Criminal Statute on the Environment in connection with Articles 83 of the Criminal Code, and with Article 287 of said instrument for those who acted in name and as representatives of the non-governmental organizations Bioma and Fundacetácea. By the same token two members of the public were prosecuted for aiding and abetting in the crime of hunting and killing a dolphin.[FN8]

[FN8] On December 5, 1995, the Second Court of First Instance for Criminal Matters of the Judicial District of the State of Sucre sentenced the fishermen who accompanied the biologists to six months imprisonment in a national detention facility for their part in the crime and ordered the execution of the sentence. They were later released on parole.

28. According to the State, “it is demonstrated that the Venezuelan biologists hired the fishermen” in order to go out to the sea to take photographs and film video footage, and later ordered them to harpoon a dolphin for scientific purposes. The State claims that the petitioners chose an easy and convenient way of avoiding the charges brought against them and, instead, opted to discredit the Venezuelan State with false accusations by pretending to be victims.

29. The State adds that Messrs. Romero and Agudo lodged the petition with the Commission without having exhausted the remedies under domestic law in accordance with Article 46 of the Convention, given that they have not made use either of the ordinary remedies of criminal procedure, or of the extraordinary remedies provided by domestic law. Further, since they intend to evade Venezuelan justice, they have not placed themselves at the disposal of the authorities for the case against them to be heard and thereby enable them to pursue the remedies they deem appropriate in order to uphold their claims.

30. The State claims that the allegation of threats against the biologists is utterly false and is intended to justify evasion of justice and to avoid compliance with the rule of exhaustion of domestic remedies required in order to appeal to take one’s case before the inter-American system. The State adds that under the Venezuelan system of laws there is freedom of expression, autonomy and separation of powers, and the right to be presumed innocent, on which basis the biologists cannot claim prejudgment of the case against them by the Courts.

31. Furthermore, the State rejects the argument that detainees in Venezuelan jails are subjected to abuses that violate their physical integrity and says that defendants in Venezuela are equal before the law and enjoy the procedural benefits to which they are legally entitled. Furthermore, the State says that if Messrs. Romero and Agudo should decide to face justice they may enjoy the procedural benefits provided by Venezuelan law, as did the other accused in the instant case.

32. The State also says that in Venezuela prompt and effective remedies are recognized for the protection of human rights and that the petitioners have not pursued these remedies because their intention is to evade justice. Instead, they appeal to the inter-American system seeking to excuse their domestic obligation when the international law of human rights reinforces or

complements the domestic law, which is why the obligation of prior exhaustion of domestic remedies exists.

33. The State holds that in the instant case no human rights have been violated and that respect has been shown for freedom of expression; for the moral integrity, personal liberty, honor and dignity of the petitioners; and for the existence of judicial guarantees, due process, equality before the law, and the principle of innocence. The State adds that the petitioners have access to the Venezuelan courts and may pursue any judicial remedy or measure that they consider necessary. However, Messrs. Romero and Agudo fled Venezuela of their own free will and accuse the State of violations that do not exist.

IV. ANALYSIS

A. Competence of the Commission

34. The petitioner claim that the State has violated his rights under Articles 5(1), 7(6), 8, 11(1), 13, 24 and 25 (Judicial Protection) of the American Convention in connection with Article 1(1) thereof. The State ratified the American Convention on Human Rights on August 9, 1977. The events alleged in the petition lodged with the Commission occurred after the State ratified the American Convention.[FN9] The petition was lodged with the Commission by Rights International, The Center for International Human Rights Law, Inc, which has the legal capacity to do so in accordance with Article 44 of the American Convention. Accordingly, the Commission is competent to take up this petition in accordance with Article 44 of the American Convention and Articles 18 and 19 of its Statute.

[FN9] In respect of this point it should be emphasized that at the time of ratifying the American Convention Venezuela made a reservation as regards Article 8(1), insofar as Article 60(5) of the Constitution of the Republic of Venezuela establishes that persons accused of an offense against the res publica may be tried in absentia, with the guarantees and in the manner prescribed by law. Such a possibility is not provided for in the aforementioned Article 8.

B. Requirements for the admissibility of the petition

a. Exhaustion of domestic remedies

35. Article 46(1) (a) of the American Convention provides the following:

1. Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements:

a. that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law;

By the same token, the Convention provides possible exceptions to this rule in Article 46(2), which states:

2. The provisions of paragraphs 1.a and 1.b of this article shall not be applicable when:
 - a. 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. the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
 - c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

36. The Commission observes that in the instant case the petitioner says that Venezuelan law does not provide due process of law and denies Dr. Romero and Professor Agudo access to an effective domestic remedy to contest the charges against them, and that, accordingly, domestic remedies have effectively been exhausted.[FN10] The State for its part, rejects these arguments and maintains that all the remedies needed to resolve this dispute in the domestic sphere are in place and that the petitioners did not pursue them but, rather, straightaway instituted an international proceeding.[FN11]

[FN10] See paragraphs 21, 22 and 23 of the instant report.

[FN11] See paragraphs 30-34 of the instant report.

37. In that connection, the Commission stresses that it has held previously that the international protection afforded by the supervisory bodies of the Convention is of a subsidiary, reinforcing, and complementary nature designed as a mechanism to strengthen protection of human rights; and that this nature has been provided for by the domestic law of the American states. It cannot be assumed that the Commission is an instance that may take up and decide petitions regarding alleged violations that have not been taken up and exhausted by the domestic courts or, by the same token, which are pending a decision in the respective State.[FN12]

[FN12] See: Resolution 29/88, Case No. 9260, Jamaica, September 14, 1988; Report No. 39/96, Case No. 11.673, Argentina, October 15, 1996; and Report No. 88/99, Case No. 12.013, Paraguay, September 27, 1999.

38. In the instant case, from the positions of the parties it can be seen that the alleged victims have not even attempted to pursue the domestic remedies offered by Venezuelan law. The Commission considers that the petitioner has not provided sufficient grounds to show that the exceptions contained in Article 46(2) of the Convention should apply to it, since in Venezuela there are suitable remedies to protect the rights that are deemed violated. It has not been demonstrated that the alleged victims have been denied access to such a remedy or been

prevented from exhausting it, given that they have not attempted to do so. Nor is it possible to allege unwarranted delay in rendering of a judgment under a remedy that has yet to be sought.

39. The Commission recalls that, as it itself has noted in reference to the European Court, the decisive point is not the subjective fear of the interested party regarding the impartiality of the court that is to hear the case, but rather whether the circumstances indicate that his fears can be objectively justified, given that, in principle, the personal impartiality of the members of the tribunal must be presumed until there is proof to the contrary and, in this case, the Commission cannot conclude that the court's decisions will be made in a way that is biased and violates due process. [FN13]

[FN13] See Report 82/98, Case 11.703, Gustavo Gómez López against Venezuela, September 28, 1998, paras. 21-24.

40. For the foregoing reasons, in casu, the Inter-American Commission accepts the objection of failure to exhaust domestic remedies presented by the State. Based on the foregoing, the Commission abstains, since the matter is rendered moot, from examining the other admissibility requirements provided in the Convention.

V. CONCLUSIONS

41. The Commission has found that the petition does not meet the requirement provided in Article 46(1)(a) of the American Convention. In consequence, the Commission concludes that the petition is inadmissible in accordance with Article 47(a) of the Convention.

42. Based on the above factual and legal arguments,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant case inadmissible.
2. To notify the petitioner and the State of this decision; and
3. To publish this decision and to include it in its Annual Report to the OAS General Assembly.

Done and signed in Washington, D.C., on the 3rd day of the month of October, 2000. (Signed): Hélio Bicudo, Chairman; Claudio Grossman, First Vice-Chairman; Juan Méndez, Second Vice-Chairman, Marta Altolaguirre, Robert K. Goldman, Peter Laurie and Julio Prado Vallejo, Commissioners.