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File Number(s): Report No. 101/00; Case 11.630
Session: Hundred and Eighth Regular Session (2 – 20 October 2000)
Title/Style of Cause: Rosa Margarita Arauz and 1,447 Others v. Nicaragua
Doc. Type: Decision
Decided by: Chairman: Helio Bicudo;
First Vice-Chairman: Claudio Grossman;
Second Vice-Chairman: Juan Mendez;
Commissioners: Marta Altolaguirre, Robert K. Goldman, Peter Laurie, Julio Prado Vallejo
Dated: 16 October 2000
Citation: Margarita Arauz v. Nicaragua, Case 11.630, Inter-Am. C.H.R., Report No. 101/00, OEA/Ser.L/V/II.111, doc. 20, rev. (2000)

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I. SUMMARY

1. On May 7, 1996, the Inter-American Commission on Human Rights hereinafter “the Commission”) received a petition filed against the Republic of Nicaragua (hereinafter “the State” or “the Nicaraguan State”), alleging that the State refused the benefit of impecunious litigation to 8,288 people who did not have the wherewithal to deposit surety bonds in two civil suits for breach of contract brought before the Sixth Court of the Managua Civil District against the Coca Cola Company and others. The plaintiffs wanted the company to honor the terms of its “Coca Cola Crazy Number” promotion, which offered to reward specially marked soda-bottle caps with up to 50,000 cordobas (equal to approximately USD \$7,200). The complainants alleged that they held winning numbers and demanded that the company pay the prizes it had offered.

2. In filing their suits, the plaintiffs asked the judge to allow them the benefit of impecunious litigation, arguing that most of them were out of work and their incomes did not exceed five hundred cordobas a year (around USD \$72), the amount set by Nicaragua’s Code of Civil Procedure for said benefit to be granted.

3. The petitioners claim that the State is responsible for violations of the right to a fair trial (Article 8), the right to equal protection of the law (Article 24), the right to judicial protection (Article 25), all in conjunction with the duty of respect and ensuring those rights (Article 1(1)) and the obligation of adapting domestic legislation (Article 2), set forth in the American Convention on Human Rights (hereinafter “the Convention”), by reason of the judicial ruling handed down on December 17, 1993, by the Fourth Civil Court of the Managua Civil District, which refused the plaintiffs the benefit of impecunious litigation and ordered the deposit of a

surety bond to cover costs in the amount of 29,036,000 cordobas (equal to approximately USD \$4,177,152).[FN1]

[FN1] The cost bond ordered by the judge in this ruling required the 8,288 plaintiffs to pay a total of 29,036,000 cordobas which, divided among all the plaintiffs, came out at 4,245 cordobas each (around USD \$504).

4. During its processing of this case, the Commission made itself available to the parties to offer its services in friendly settlement proceedings; in addition, a working meeting was held with the parties. However, the State refused to accept this procedure and instead asked the Commission to declare that Nicaragua was not responsible for the alleged incidents. In connection with this, the State pointed out that the two trials, together with the remedies of annulment, repeal, and appeal filed by the complainants, were pursued in accordance with Nicaraguan civil procedure, with all applicable judicial guarantees, and pursuant to the terms of domestic law and the American Convention.

5. At its 108th special session, and after analyzing the legal and factual elements reported by the parties during its processing of the petition, the Commission decided to declare this case inadmissible.

II. PROCESSING BY THE COMMISSION

6. On May 28, 1996, the Commission opened Case 11.630, transmitted the relevant parts of the complaint to the State and gave it a period of 90 days to submit its reply. On June 11, 1996, the petitioners sent the Commission additional information on the domestic proceedings, which was sent to the State for comments.

7. On August 22, 1996, the State submitted its comments, in which it reported that most of the plaintiffs were professionals, technical workers, and merchants, and that the Nicaraguan magistrates had for that reason refused them the benefit of impecunious litigation. The State's reply was transmitted to the petitioners on October 25, 1996.

8. On December 2, 1996, the Commission received the petitioners' comments, claiming that many of the plaintiffs, when they filed suit, were out of work or were variously employed as bricklayers, housewives, schoolteachers, etc. On December 5, 1996, the petitioners sent the Commission copies of additional documents related to the case file. Both communications were transmitted to the Nicaraguan State on December 23, 1996, and resent on February 20, 1997.

9. On April 23, 1997, the petitioners asked the Commission for information on the current status of the case, pointing to the State's delay in replying. On May 20, 1997, and January 23, 1998, the Commission once again asked the State for its comments on the petitioners' reply. On February 26, 1998, the petitioners sent the Commission additional information, which was subsequently sent to the State on February 6, 1998.

10. On January 26, 1998, the Commission decided to make itself available to the parties to offer its services in friendly settlement proceedings, pursuant to the terms of Articles 48(1)(f) of the Convention and 45(4) and 45(5) of the Commission's Regulations.

11. In a note dated March 17, 1998, the petitioners accepted the Commission's friendly settlement proposal. On March 24, 1998, however, the State reported that it would not accept a friendly settlement in this case because the Nicaraguan State had in no way restricted or limited the plaintiffs' access to justice.

12. On June 19, 1998, the Commission received a further communication from the petitioners asking for a report to be issued under Article 50 of the Convention. The Commission sent this information to the Government on June 30, 1998. On September 4, 1998, the Commission received comments from the State confirming its position. The Commission sent this information to the petitioners on September 21, 1998.

13. On October 21, 1998, the petitioners repeated their request for a report on the merits of the case on account of its current status and the State's refusal to accept a friendly settlement. The petitioners' communication was transmitted to the State on December 2, 1998.

14. The State replied on February 2, 1999, and repeated its position regarding this case. The Commission forwarded that information to the petitioners on March 30, 1999. Subsequently, on March 5, 1999, the petitioners repeated the request they had placed before the Commission in their previous communication. On March 30, 1999, the Commission sent the communication to the State for its comments.

15. The petitioners submitted their comments on April 30, 1999, and asked the Commission to recommend that the Nicaraguan State repeal Article 939 of the Code of Civil Procedure. In accordance with procedure, this communication was sent to the State on June 15, 1999, for its comments. On August 17, 1999, the Commission received the State's reply, ratifying each and every one of its previous claims.

16. During their working visit to Managua on December 3, 1999, the Rapporteur for Nicaragua and the lawyer in charge of that country's cases asked the State's representatives for this case to be processed by means of the friendly settlement mechanism. The State rejected that request, on the grounds that it had committed no human rights violations.

17. At the petitioners' request, on March 6, 2000, the Commission and the parties held a working meeting with a view toward reaching a friendly settlement. On that occasion the petitioners asked the State to publicly recognize its responsibility, pay the costs of processing the case, give the victims a symbolic compensatory payment, in the event that the case could not be reopened, make full amends to the victims, and implement an education campaign for the population as a whole regarding the meaning and scope of the right to justice. The Commission granted the State a period of 30 days to reply to this list of requests.

18. In a communication dated April 10, 2000, the Nicaraguan State rejected the friendly settlement proposal and repeated its position vis-à-vis each of the points. In accordance with procedure, the communication was forwarded to the petitioners on April 12, 2000.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioners

19. The petitioners claim that on June 18 and 20, 1993, a total of 8,288 individuals, divided into two groups, filed two civil suits with the Fourth Court of the Managua Civil District, alleging a breach of contract by the Coca Cola Company and others. The plaintiffs wanted the company to honor the terms of its “Coca Cola Crazy Number” promotional campaign, in which it had promised to reward specially marked bottle tops with prizes of up to 50,000 cordobas. The plaintiffs claimed they held winning numbers and demanded that the company award them the promised prizes.

20. In the suit, the plaintiffs asked the judge to grant them the benefit of impecunious litigation, since most of them were out of work and had annual incomes of less than 500 cordobas, the amount beneath which, according to Nicaragua’s Code of Civil Procedure, that benefit should apply. As evidence of their inability to pay the surety bond set by the judge, the plaintiffs submitted a study by the Nicaraguan Institute of Social and Economic Research (INIES) describing the country’s economic and social situation. The plaintiffs also submitted the Central Bank of Nicaragua’s 1994 report and the Inter-American Development Bank’s 1995 report on Nicaragua.

21. The petitioners claim that it was impossible for the plaintiffs to come up with the amount of money required to guarantee the costs of the trial. Since the plaintiffs did not provide the amount demanded by the judge, the suit brought before the ordinary court was dismissed. According to the petitioners, as a result of this refusal to grant them the benefit of impecunious litigation, the plaintiffs were denied access to justice: this constituted, in their opinion, a serious case of discrimination on economic grounds.

22. The petitioners further state that on account of the large number of plaintiffs, the request for impecunious litigation was presented on a collective basis, in the interests of legal logic and procedural economy. They thus note that the INIES socioeconomic study was a unified piece of evidence to give account of the plaintiffs’ economic situation.

23. The petitioners claim that refusing the benefit of impecunious litigation and requiring the posting of the cost bond restricted the right of access to justice as enshrined in Article 8 of the American Convention. Furthermore, the petitioners claim that the plaintiffs were denied prompt and effective recourse because they lacked the economic wherewithal; consequently, the State also violated the terms of Articles 24 and 25 of the Convention.

24. The petitioners also maintain that the surety system provided for in Article 939 of the Code of Civil Procedure creates inequalities that prevent the poorer segments of the population

from having access to the courts;[FN2] consequently, the State is in breach of Articles 1(1) and 2 of the Convention.

[FN2] Article 939 of the Code of Civil Procedure reads: “In all trials involving a greater amount the plaintiff, whether of domestic or foreign nationality, shall be obliged, at the defendant’s request and as long as the first-instance proceedings remain unresolved, to provide surety to cover the payment of costs and damages should the judgment so require.”

B. Position of the State

25. The State maintains that the benefit of impecunious litigation, which effectively grants an exemption from the requirement of providing surety to cover any costs that may be incurred, was disallowed by the judge presiding over the Fourth Civil Court of the Managua Civil District. The judge held that most of the plaintiffs were professionals, technical staff, and merchants, and that decision was upheld by the Appeals Tribunal and the Supreme Court of Justice.

26. The State maintains that the plaintiffs did not follow the correct procedure for obtaining the benefit of impecunious litigation: according to Article 874 of the Code of Civil Procedure, parties interested in securing that benefit must apply individually and not collectively. The purpose of Nicaraguan law in making this a personal right is to enable the judge to assess and evaluate the evidence provided by the litigants in an expedite fashion. The State further noted that some of the plaintiffs from among the total number could have been granted the benefit if they had applied individually, and their suits would not have been dismissed because they would have been exempt from posting the surety bond.

27. In connection with this, the State points out that no one can be obliged to initiate a lawsuit, since doing so implies the acquisition of responsibilities, such as those that arise from the need of the respondent to offer a defense; that need can give rise to economic responsibilities, which justifies the existence of the obligation of providing surety to cover any costs that the court may order. The State maintains that the benefit of free justice cannot be extended to individuals such as those represented by the petitioner; that benefit is awarded to parties who demonstrate that they lack the economic wherewithal required to litigate.

28. The State alleges that the suits filed in this case failed to prosper because the plaintiffs did not post a cost bond. It therefore holds that it has not denied anyone justice and that it has not violated the right to procedural guarantees or the right of equality before the law. In this regard the State believes that this case was conducted in accordance with law since, under domestic law, pursuant to Article 939 of Code of Civil Procedure, all plaintiffs can be required, at the respondent’s request, to post surety in order to guarantee costs. The State holds that both the first-instance and second-instance trials, and the appeal and repeal proceedings, were conducted with the judicial guarantees required by law. It further states that the rulings and sentences handed down were reached in compliance with domestic law and with the judicial guarantees of due process.

IV. ANALYSIS OF ADMISSIBILITY

A. Competence of the Commission

29. The Commission is, at first glance, competent to examine the petitioners' complaint, in that the allegations refer to presumed violations of the rights enshrined in Articles 8 (fair trial), 24 (equality before the law), and 25 (judicial protection) of the American Convention, as stipulated in Article 44 thereof. The alleged incidents took place under the jurisdiction of Nicaragua, which has been a state party to the Convention since September 25, 1979.

30. The Commission will now analyze whether this petition meets the requirements for admissibility set forth in Articles 46 and 47 of the American Convention.

B. Exhaustion of Domestic Remedies

31. Article 46(1)(a) of the American Convention stipulates that:

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.

32. The Commission has on repeated occasions stressed the ancillary or complementary nature of the inter-American human rights protection system. This nature can be seen in Article 46(1)(a) of the Convention, which enables States to first resolve issues within their own legal frameworks before facing international proceedings.

33. In the case at hand, the petitioners claim to have exhausted the domestic remedies provided by Nicaraguan law, but that filing those remedies was fruitless.

34. Similarly, in response to the requests for information sent to it by the Commission, the Nicaraguan State reported that its domestic remedies had been exhausted.

35. In this case, the petitioners report they filed two civil suits before the Nicaraguan courts, in two groups,[FN3] on June 18 and 20, 1993. In those proceedings, the plaintiffs applied for the benefit of impecunious litigation. On December 17, 1993, upon refusing to grant this benefit, the court ordered the plaintiffs to provide a surety bond for the costs the proceedings could incur in the amount of 29,036,000 cordobas which, if not deposited within a period of 15 days, would cause the suit to be filed.

[FN3] The first suit was filed on July 18, 1993, by Rosa Margarita Arauz Molina and 1,447 other individuals. On July 20, 1993, Pedro Aguilera Aguilar and 6,839 other people filed the second suit.

36. The plaintiffs filed for the annulment of that decision on January 19, 1994, since Nicaraguan law states that before a cost bond can be ordered, the appointment of a common attorney must be ordered. The presiding judge of the Fourth Court, in a ruling handed down on March 4, 1994, declared the annulment proceedings inadmissible and dismissed the combined ordinary suits because the cost bond had not been deposited within the period set.

37. On March 10, 1994, an appeal against the decision of the Fourth Court was made to the Appeals Tribunal, Region III, Civil and Labor Circuit of Managua. In a decision handed down on May 26, 1994, the Appeals Tribunal upheld the lower court's ruling.

38. The plaintiffs filed an extraordinary repeal motion against the merits of the Appeals Tribunal's ruling on October 10, 1994; this was declared inadmissible on November 7, 1994. Finally, the plaintiffs filed a de facto remedy before the Supreme Court of Justice which, in a ruling given on November 7, 1995, decided not to admit it, thus exhausting all the remedies offered by domestic law.

39. At the same time, in response to the requests for information sent to it by the Commission, the State noted that domestic remedies had been exhausted in that the case in hand had been ruled on by the first-instance courts and upheld on appeal and by the Supreme Court of Justice.

40. In light of the evidence contained in the case file, the Commission believes it is a proven fact, undisputed by the parties, that in the case at hand the remedies offered by domestic law were exhausted, since the petitioners did have access to the different courts and tribunals provided for in the Nicaraguan legal system. Hence, the petition meets the admissibility requirement set forth in Article 46(1)(a) of the Convention.

C. Filing Period

41. Article 46(1)(b) of the Convention states that petitions and communications must be lodged within six months of the date on which the party alleging violation of his rights is notified of the final judgment.

42. The Commission notes that the petitioners brought their case before it within the stipulated period, since the ruling of the Supreme Court—the final instance in the domestic proceedings—was dated November 7, 1995, and the petition was submitted to the Commission on May 7, 1996. The Commission therefore concludes that this petition meets the terms of Article 46(1)(b) of the Convention.

D. Duplication of Proceedings and Res Judicata

43. Article 46(1)(c) of the Convention states that for the Commission to admit a petition or communication, its subject matter must not be pending in any other international proceeding. Similarly, Article 47(d) of the Convention rules that the Commission will declare inadmissible

any petition or communication that is substantially the same as one previously studied by the Commission or by another international organization.

44. The parties' allegations and the documents contained in the case file do not indicate that the petition is pending in any other international proceeding or arrangement, or that it is substantially the same as any other petition previously studied by the Commission or other international agency. The Commission therefore believes that in this case, the requirements for admissibility set forth in Articles 46(1)(c) and 47(d) of the American Convention on Human Rights have been met.

E. Nature of the Alleged Incident

45. Article 47(b) of the Convention provides that the Commission shall declare inadmissible any petition when "the statements of the petitioner or of the state indicate that the petition or communication is manifestly groundless or obviously out of order."

46. In the initial stages of the proceedings, the State claimed that the complaint was groundless and denied that the Nicaraguan judicial authorities had perpetrated human rights violations.

47. In contrast, the petitioners held that since they were denied the benefit of impecunious litigation, their access to justice was restricted: hence, their individual guarantees under the Convention were violated.

48. In light of this, the Commission must determine, through a preliminary examination of this petition's merits, whether the allegations it contains are duly grounded and do constitute violations under the terms of the American Convention.

49. In filing suit, the plaintiffs asked the domestic court to grant them the benefit of impecunious litigation. The first-instance judge, however, in decisions handed down on July 16 and August 18, 1993, denied them this benefit. Subsequently, on August 27, 1993, he ordered the two suits to be combined and instructed the plaintiffs to appoint a single legal representative. Later, in a ruling dated December 17, 1993, the court admitted the parties and ordered the plaintiffs to provide a bond to cover costs in the amount of 29,036,000 cordobas, which, if not deposited within a period of 15 days, would cause the suit to be filed.

50. In its comments, the State argued that the benefit of impecunious litigation is an individual right, as stipulated in Article 874 of the Nicaraguan Code of Civil Procedure. The purpose of Nicaraguan law in making this a personal right is to enable judges to assess and evaluate the evidence provided by litigants in an expedite fashion and in accordance with the terms set by procedural law.

51. The Nicaraguan State denied that this case involved discrimination on economic grounds and, together with its comments, submitted a list of the plaintiffs' jobs and professions, indicating that the surety set for all the plaintiffs was reasonable. The State claimed that the plaintiffs in this case were not destitute and, hence, the terms set forth in Advisory Opinion OC-

11/90 of the Inter-American Court of Human Rights did not apply to them.[FN4] The State concluded that the petitioners were required to post the bond set by the judge, since most of them had jobs and professions that provided them with annual incomes in excess of 500 cordobas, the limit set by Nicaraguan law for the benefit of impecunious litigation to apply.

[FN4] Inter-American Court of Human Rights, Advisory Opinion OC-11/90, August 10, 1990.

52. Article 874 of Nicaragua's Code of Civil Procedure provides that:

An individual whose capital, together with the fees, wages, and incomes that he receives, calculated on a yearly basis, does not reach the sum of five hundred pesos, can apply for the benefit of impecunious litigation.

This calculation shall not take into account his normal place of residence, judicial actions, and loans that it is difficult to collect, or the tools, instruments, or implements required by the applicant to exercise his profession or perform his job.

53. Consequently, Article 939 of this Code stipulates that in trials involving larger amounts, the plaintiff is required, at the respondent's request and as long as the first-instance proceedings remain unresolved, to provide surety to cover such costs and damages as the judgment may require.

54. In the list submitted by the State, containing the names of the 8,288 complainants and their jobs and professions, it can be seen that the plaintiffs in this case were a heterogeneous group: housewives, doctors, cardiologists, lawyers, mechanics, workmen, shopkeepers, technicians, students, machine operators, musicians, apprentice carpenters, etc. The judge did not therefore grant the benefit of impecunious litigation to this group of individuals with different levels of income.

55. As evidence of their economic situation, the petitioners merely submitted a number of documents, such as the report of the Nicaraguan Institute of Social and Economic Research, the Central Bank of Nicaragua's 1994 report, and the Inter-American Development Bank's 1995 report on Nicaragua. However, these studies provided no specific evidence of the economic situation of each individual plaintiff; there is insufficient evidence in the case file to show that the 8,288 plaintiffs were destitute or unable to provide the surety required by the Nicaraguan courts.

56. The Commission has stated that it is not competent to review judgments handed down by national courts acting within their jurisdiction and observing due judicial guarantees, or to rule on the merits of such sentences, except when the domestic proceedings violate the guarantees of due process or any other right enshrined in the Convention.[FN5]

[FN5] See IACHR, Report No. 39/96, Case 11.673 (Argentina), October 15, 1996; IACHR Annual Report 1996, paragraphs 50 and 51.

57. In the case at hand, the Commission notes that the plaintiffs had access to each of the instances provided for by domestic legislation and that the State acted in accordance with the law. Requiring the plaintiffs to guarantee costs in order for them to be heard at trial and their material inability to post the required bond should be proved on a case-by-case basis and not globally, as the petitioners did with the aforesaid reports; this fact led to the dismissal of the suits filed with the different courts. In this regard, it is important to note that the failure of the domestic remedies to yield a result favorable to the plaintiffs does not demonstrate per se that rights and guarantees enshrined in the Convention were violated.

58. The Commission believes that the allegations do not indicate that the domestic courts acted in breach of rights protected by the Convention. Although the decisions of the exhausted instances were not favorable to their interests, the violations alleged by the petitioners arose from a provision of procedural law requiring incontrovertible proof of poverty for the benefit of impecunious litigation to be granted.

59. The Commission believes that in the case at hand, the petitioners' submissions do not contain sufficient grounds or evidence to indicate the responsibility of the Nicaraguan State in violations of rights enshrined in the American Convention.

V. CONCLUSIONS

60. The Commission concludes that the terms of Article 47(b) of the American Convention on Human Rights apply to this petition.

61. After analyzing the documents submitted by the parties, the Commission concludes that they do not describe duly grounded facts that tend to establish violations of the rights set forth in Articles 1, 2, 8, 24, and 25 of the American Convention on Human Rights.

62. In light of the above factual and legal considerations,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

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

Done and signed by the Inter-American Commission on Human Rights, on the 16th day of October, 2000. (Signed): Hélio Bicudo, Chairman; Claudio Grossman, First Vice-Chairman;

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Juan Méndez, Second Vice-Chairman; Commissioners Marta Altolaguirre, Robert K. Goldman, Peter Laurie, and Julio Prado Vallejo.