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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 69/00; Case 11.724
Session: Hundred and Eighth Regular Session (2 – 20 October 2000)
Title/Style of Cause: Braulio Jatar Alonso v. Venezuela
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: 19 October 2000
Citation: Jatar Alonso v. Venezuela, Case 11.724, Inter-Am. C.H.R., Report No. 69/00, OEA/Ser.L/V/II.111, doc. 20, rev. (2000)

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I. SUMMARY

1. On February 3, 1997 the Inter-American Commission on Human Rights (hereinafter “the Commission”) received a petition dated January 30, 1997 regarding the alleged violation by the Republic of Venezuela (hereinafter “Venezuela” or “the State”) of rights protected in the American Convention on Human Rights (hereinafter “the Convention”) to the detriment of Mr. Braulio Jatar Alonso (hereinafter “the petitioner”). Mr. Braulio Jatar Alonso was indicted for the crimes of extortion and attempted peddling of influences by a public official, as a result of events that occurred while he was ad honorem advisor to the Chair of the Oversight Committee (Comisión de Contraloría) of the Chamber of Deputies of Venezuela. The Superior Tribunal for the Protection of Public Assets sentenced Mr. Jatar Alonso, in his condition as a public official, to three and a half years in prison for extortion and acquitted him of the charge of attempted peddling of influences by a public official. Mr. Jatar filed an appeal and the Tribunal pronounced a judgment in which it reduced the sentence to three years in prison. Mr. Jatar then filed an appeal for protection (“amparo”), which was disallowed and on January 31, 1995, the Tribunal ordered execution of the sentence and declared Mr. Jatar a fugitive of justice abroad. On December 29, 1998, Mr. Jatar communicated to the Commission his decision to give himself up to the Venezuelan authorities as part of an agreement with the Venezuelan Ministry of Justice under which he would be granted a presidential pardon. On December 30, 1998 he was granted a presidential pardon on humanitarian grounds.

2. In particular the petition alleges violation by the Venezuelan State of Articles 8 (Right to a Fair Trial); 11 (Right to Privacy); 24 (Right to Equal Protection); and 25 (Right to Judicial Protection) in connection with Articles 1(1) and 2 of the American Convention, to the detriment

of Mr. Braulio Jatar Alonso. The petitioner lodged his petition on February 3, 1997. The Commission began to process the petition on February 18, 1997.

3. The State presented its reply in which it argued that the petition was inadmissible in accordance with Articles 46(1)(b) of the Convention and 38(1) of the Commission Regulations, inasmuch as the petition was lodged after the deadline for presentation and that none of the allegedly violated rights had been infringed by the State.

4. From its analysis of the admissibility requirements, the Commission finds the petition inadmissible in accordance with Article 47(a) of the American Convention, and Article 37 of its Regulations.

II. PROCESSING BY THE COMMISSION

5. On February 18, 1997 the Commission began to process the case and requested the State for information on the facts alleged by the petitioner. On August 18, 1997, the State requested the Commission to grant it an extension under Article 34(5) of the Commission Regulations (hereinafter “the Regulations”) and on September 10, 1997 presented its reply dated September 5 of that year, in which it held that the petition was inadmissible pursuant to Articles 46(1)(b) of the Convention and Article 38(1) of the Regulations. The petitioner submitted comments to the State’s reply and the Commission later received information from both parties. The Commission received the petitioner’s comments together with supplementary information on September 27, 1997; February 23, July 8, August 3, December 1, and December 17, 1998; and on February 5, April 30, September 9, and November 1, 1999; and October 17, 2000. The State presented its comments on January 26, April 21, and October 13, 1998; and on March 11, September 20, and October 23, 1999; and August 24, 2000.

6. On September 7, 2000, Mr. Braulio Jatar presented a brief dated September 1 of that year, in which he informs the Commission that he has instituted a “domestic legal proceeding for review of the illegal and arbitrary judgment pronounced by the now-abolished Superior Tribunal for the Protection of Public Assets in the Republic of Venezuela” and requested “a stay of the instant proceeding until a final decision had been rendered on [his] new petition before the new criminal courts in pursuance of the procedure provided in Articles 463 et seq. of the new Organic Code of Criminal Procedure.”

III. POSITIONS OF THE PARTIES

A. The petitioner

7. The petitioner alleges that between 1989 and 1990, while serving as ad honorem advisor to the Chair of the Oversight Committee of the Chamber of Deputies of Venezuela and in the course of practicing his profession as an attorney-at-law, he attended a private meeting in the State of Florida with a prospective client by the name of Lamaletto in the company of his partner, Dr. Aurelio Fernández Cochese. A video was filmed of that meeting allegedly showing a discussion over the fee to be paid to Messrs. Jatar Alonso and Fernández Cochese for the services required by the prospective client.

8. The petitioner says that, to his surprise, upon his return to Venezuela the contents of that video were released and he was brought upon criminal charges as a result of persecution by “powerful political figures,” who had been the subject of investigations conducted by him in the course of carrying out his work of examining complaints of corruption as part of his duties as ad honorem advisor. The foregoing resulted in his prosecution in Venezuela (for acts that occurred abroad) as a public official and in accordance with the Organic Law on Protection of Public Assets for several offenses against the res publica, one such being the crime of extortion.[FN1]

[FN1] Article 196 of the Venezuelan Criminal Code provides in connection with the crime of extortion (Title III, Offenses against the res publica, Chapter II, Extortion) that:
any public official who, abusing his position, compels someone to give or to promise either to the official himself or to a third party a sum of money or benefit or bribe, shall be sentenced to eighteen months to five years in prison. If the sum of money or bribe given or promised is of minor value, the term of imprisonment shall be from three to twenty-one months.

9. The petitioner claims that violations of due process occurred during the proceeding, which led to his conviction based on a recording made abroad without his consent and on the testimony of two persons with an interest in the outcome of the trial. He says that his right to equal protection was violated, as was his right to be assisted by legal counsel, and he adds that he is afraid to be in a Venezuelan prison due to the conditions therein.

10. The petitioner underscores that Mr. Fernández, who likewise was serving as ad honorem advisor, was also at the meeting that resulted in his later prosecution. The petitioner says that no charges whatsoever were brought against the latter, nor was he prosecuted for the same crimes as Mr. Jatar.[FN2]

[FN2] The petitioner makes reference to Article 4 (1) and (2) of the Venezuelan Criminal Code, which provides:

The following are liable to prosecution in Venezuela and shall be punished in accordance with Venezuelan criminal law:

1. Venezuelans in a foreign country who are accused of treason against the Republic and those who commit acts against other Venezuelans that are punishable under that country’s laws.
2. Foreign subjects or citizens, who commit a crime in a foreign country against the security of the Republic or against a national thereof.

In both cases it is required that the criminal suspect have entered the territory of the Republic and a complaint filed against him by the injured party, or by the Office of the Attorney General in cases of treason or an offense against the security of Venezuela.

11. In connection with the foregoing, the petitioner claims that he was tried without due guarantees by a tribunal that lacked legal competence. He was attributed the condition of a public official, a position which he did not hold since he was an ad honorem advisor and was

neither appointed, nor took an oath at any time as a public official. Despite that, he was tried by the Superior Tribunal for the Protection of Public Assets in a proceeding that characterized the lack of independence and impartiality of the Venezuelan courts, which lack a simple and prompt recourse “designed to protect people against acts that violate their human rights and which enable those rights to be restored.” Furthermore, Venezuela was arbitrarily imposed on him as the venue for his trial, when the correct procedure would have been for him to be investigated in the United States because that is where the events took place.

12. The petitioner alleges that the State violated his right to have his honor and reputation respected as a result of being morally discredited, and adds that the State of Venezuela violated his right to equal protection of the law, as reflected by the fact that the petitioner was the only one prosecuted and convicted for the denounced acts.

13. The petitioner says that he lodged his petition in a timely manner and that he first addressed the Commission on July 31, 1996, on which occasion his petition was not processed for failure to meet the necessary requirements. On January 30, 1997 he presented a brief that “ratified, amended, and complemented” the information contained in his original petition. He adds that the record shows that on January 8, 1997 he addressed the Commission and mentioned the “sudden appearance of a Supreme Court decision that disallowed” his amparo application and was “supposedly delivered on May 23, 1996.”

14. Finally, the petitioner holds that the reply of the Government of Venezuela “missed the deadline for presentation, even with all the legally permitted extensions being granted” given that the State was notified on February 18, 1997, and the deadline for presentation of its reply was August 18, 1997. Based on the foregoing, the petitioner requests that the State be found in contempt.

B. The State

15. The State requests that the petition be found inadmissible on grounds that it was lodged after the deadline for presentation, the violations alleged do not exist, and it does not state the true facts. The State argues that the petition is inadmissible because it was submitted to the Commission for consideration later than six months after the petitioner was notified of the final judgment of the Superior Tribunal for the Protection of Public Assets, which convicted the petitioner of the crime of extortion. The State says that it has not interfered with nor obstructed the petitioner’s access to the remedies under international law and that, on the contrary, the petitioner has been at full liberty to seek them but in the instant case has missed the deadline for doing so.

16. The State says that the petitioner “has been tried in an absolutely normal proceeding conducted with respect for the guarantee of due process,” which began with a “noticia criminis”, after which an order to proceed was issued in accordance with the provisions contained in the Code of Criminal Procedure, and the necessary investigations were held, at which the petitioner was present in order to testify voluntarily.

17. The State adds that initially a warrant was issued for the arrest of the petitioner for the crimes of attempted extortion, unlawful use of information and attempted peddling of influences by a public official, which are crimes recognized in and punished by the Organic Law on Protection of Public Assets, in accordance with the Criminal Code and the Code of Criminal Procedure. The petitioner appealed the arrest warrant and the Superior Tribunal for the Protection of Public Assets withdrew the warrant for the crime of [unlawful] use of confidential information but maintained it on all other counts.

18. The State says that an indictment was filed for the crimes of extortion and peddling of influences by a public official and that the petitioner submitted a written reply to those charges at a public hearing of the accused, which was “postponed on various occasions [...] due to the failure on the part of the counsel for the defense to attend that proceeding.” The State adds that during the trial the petitioner’s defense attorney formally recused the judge presiding over the case and the record was referred to another bench, which “pronounced judgment sentencing citizen Braulio Jatar to serve a term of three and a half years in prison for the crimes of Extortion and Peddling of influences by a public official”.

19. The State says that the conviction was appealed and subsequently the court sentenced the petitioner to serve a term of three years in prison “for being guilty of the crime of extortion [...] and acquitted citizen Braulio Jatar of the charges brought by the representative of the Attorney General’s office with respect to the crime of attempted peddling of influences by a public official.” The petitioner did not exercise his right to appeal the decision to the court of cassation, for which reason the decision was final and the court ordered its execution. Based on the foregoing, the State holds that the trial of the petitioner was conducted in an “absolutely normal” manner and in accordance with domestic law.[FN3]

[FN3] They say that in the instant case, on July 29, 1994, the court of first instance pronounced judgment against which the petitioner appealed; A decision was issued on that appeal by the Superior Tribunal for the Protection of Public Assets on January 31, 1995, and on March 1, 1995, Mr. Jatar filed an appeal of amparo for protection of his constitutional rights with the Venezuela Court of Cassation in criminal matters.

20. As to the Tribunal’s lacking legal competence, the State says that the petitioner should have indicated his disagreement with the conviction by filing an appeal with the court of cassation and not with an international instance, such as the Commission. The State further adds that if the courts had been biased and took their orders from the Executive Branch the petitioner would have been convicted of the three crimes for which the first arrest warrant was issued or for the maximum terms possible for the crimes with which the Office of the Attorney General charged him. The State adds that the petitioner claims to disagree with the judgment but did not exercise his right of appeal to the court of cassation; instead his lawyers accepted the judgment and the petitioner found himself a fugitive of justice abroad.

21. The State says that Venezuelan criminal procedure provides remedies designed to correct all procedural irregularities, in order to ensure equal rights and powers for the parties, and to

ensure full exercise of the right of defense in the proceeding. If the petitioner considered that any of his rights had been impaired he should have pursued the legal remedy the law provides in order to seek redress for the act he regarded as injurious. The petitioner also had the possibility to file an accusation against the judge presiding over the case if he considered that that person originated the violation of his right to equal protection.

22. As to the right of defense, the State says that the petitioner was duly represented by several attorneys who defended him at every stage and level of the criminal process. The State points out that the remedy of amparo exists in Venezuela, that is a prompt, brief and effective remedy for protection of fundamental rights which enables immediate redress of infringed interests protected by law, and that all persons have recourse to it in accordance with the Constitution and the Organic Law on Protection of Constitutional Rights and Guarantees.

23. The state argues that a criminal investigation for allegedly committing a punishable act does not constitute a violation of the right to have one's honor and reputation respected, since it is possible to exercise one's right of defense and, in the case of the petitioner, the judgment that found him guilty of the crime of extortion was accepted.

24. The State further mentions that the petitioner expresses his disagreement because citizen Aurelio Fernández Concheso was not convicted and, for that reason, considers that his right to equal protection was violated. The State argues that the fact that a warrant was not issued for the arrest of Mr. Fernández "is not due to a violation of the right to equal protection of the law, but to having found no irregularity that merited a criminal investigation of him."

IV. ANALYSIS

A. Competence of the Commission and formal admissibility requirements

25. The petitioner claims that the State has violated his rights under Articles 1(1), 2, 8, 11, 24 and 25 of the American Convention. The State ratified the American Convention on Human Rights on August 9, 1977. The events connected with the complaints before the Commission occurred after the State ratified the American Convention.[FN4] The petition was lodged with the Commission by Mr. Braulio Jatar Alonso, who has legal competence to do so in accordance with Article 44 of the American Convention. On that basis, the Commission is competent to take up the instant petition under Article 44 of the American Convention and Articles 18 and 19 of its Statute.

[FN4] In respect of this point it should be mentioned 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

26. The Commission analyzes below the admissibility requirement for the petition set down in Article 46(1)(a) of the Convention, which requires that the remedies under domestic law shall have been pursued and exhausted in accordance with generally recognized principles of international law, as regards the duty of the State to provide suitable and effective domestic remedies in order to redress violations of human rights; and, as a counterpart thereto, the obligation of the alleged victim to exhaust the remedies under domestic law.[FN5]

[FN5] With the exceptions provided in Article 46(2) of the American Convention.

27. In the instant case the petitioner has argued that the remedies under Venezuelan law were duly exhausted in accordance with the requirements set down in the American Convention for lodging a case with the Commission. The State, for its part, holds that the remedy of amparo sought by the alleged victim was not the suitable recourse for impugning the decision of the Superior Tribunal for the Protection of Public Assets, given that Article 6(5) of the Organic Law on Protection of Constitutional Rights and Guarantees provides that amparo is not admissible when the appellant has sought remedies under the general jurisdiction, as is the case of appeal, and that in the instant case the appropriate remedy was an appeal to the court of cassation and not amparo.[FN6]

[FN6] Article 6 of the Organic Law on Protection of Constitutional Rights and Guarantees, provides that:

An action of amparo shall not be admitted:

5. When the injured party has opted to seek redress in the general jurisdiction or made use of preexisting judicial means ...

28. The Commission finds that the petitioner himself addressed it on September 7, 2000, in a written communication dated September 1 of that year, requesting a suspension of proceedings in the instant case before the Inter-American Commission because a new domestic legal proceeding for review of judgment was pending in Venezuela.

29. In connection with the foregoing, the Commission has held that the international protection afforded by the supervisory bodies of the Convention is of a subsidiary, reinforcing, and complementary nature. The Preamble to the Convention refers to its nature as a mechanism for reinforcing or complementing the protection provided by the domestic law of the American states. It cannot, therefore, be assumed that the Commission is an instance that may review disputes over 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.[FN7]

[FN7] 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.

30. For the foregoing reasons and in light of the last communication from the petitioner to the Commission, in casu, the Inter-American Commission says that it has on previous occasions found on the inadmissibility of petitions lodged without meeting the requirement of prior exhaustion of domestic remedies and, accordingly, concludes that it lacks competence to take cognizance of the instant case. Based on the foregoing, the Commission abstains, since the matter is rendered moot, from examining the other admissibility requirements provided in the Convention[FN8].

[FN8] In this regard see, inter alia, Report 73/99, Case No. 11.701, Mexico, May 4, 1999; Report 24/99, Case No. 11.812, Mexico, March 9, 1999; and Report 82/98, Case No. 11.703, Venezuela, September 28, 1998.

V. CONCLUSIONS

31. The Commission has found that the petition does not meet the requirement provided in Article 46(1)(a) of the American Convention and that the information advanced by the parties does not make it possible to apply the exceptions provided for in Article 46(2) thereof. In consequence, the Commission concludes that the petition is inadmissible in accordance with Article 47(a) of the Convention.

32. Based on the preceding 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 19th 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.