Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 17/01; Case 11.716
Session:	Hundred and Tenth Regular Session (20 February – 9 March 2001)
Title/Style of Cause:	Frank Ulises Guelfi Aguilar v. Panama
Doc. Type:	Decision
Decided by:	Chairman: Claudio Grossman; First Vice-Chairman: Juan Mendez; Second Vice-Chairman: Marta Altolaguirre; Commissioners: Hélio Bicudo, Robert K. Goldman, Julio Prado Vallejo, Peter Laurie.
Dated:	23 February 2001
Citation:	Guelfi Aguilar v. Panama, Case 11.716, Inter-Am. C.H.R., Report No. 17/01, OEA/Ser.L/V/II.111, doc. 20, rev. (2000)

I. SUMMARY

1. On May 6, 1996, the Inter-American Commission on Human Rights (hereinafter "IACHR" or "the Commission") received a complaint presented by Frank Ulises Güelfi Aguilar (hereinafter "the petitioner") against the Republic of Panama (hereinafter "the State" or "Panama") according to which the State's failure to reinstate him in his job, after his graduate studies in psychiatry in Brazil, led the petitioner to suffer a personal loss of US$ 60,000 in lost earnings from April 1987 to November 1989. The petitioner alleges violations of Article 6 (right to work) of the Protocol of San Salvador[FN1] and Articles 21 (right to property), 24 (right to equal protection), and 25 (right to judicial protection) of the American Convention on Human Rights (hereinafter "the American Convention"), all in violation of the obligations under Article 1(1). The State responded that the petitioner's rights and guarantees had been respected and asked that the IACHR dismiss the complaint.

[FN1] Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador," signed in San Salvador, El Salvador, November 17, 1988, at the 18th regular session of the General Assembly.

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2. In this report, the IACHR analyzes the information available in light of the American Convention and concludes that the petitioner has not stated facts that tend to establish a violation, by the Panamanian State, of the American Convention. Accordingly, the Commission decides to declare the case inadmissible pursuant to Article 47(b) of the American Convention and Article

31 of the Commission's Regulations, notify the parties, public it, and published it in its Annual Report.

II. PROCESSING BEFORE THE COMMISSION

3. On May 6, 1996 the IACHR received the complaint in the present case. On January 8, 1997, the Commission proceeded to open the case, and sent the respective notes to the State and the petitioner. On May 14, 1997, the State presented its response. The case proceeded in keeping with the Commission's Regulations.

III. POSITIONS OF THE PARTIES

A. The petitioner's position

4. The petitioner is a physician and psychiatrist in Panama. From April 1980, to March 1983, he worked as a "Resident Physician I" in a public hospital in Panama City. In January 1984 he moved to Brazil for graduate studies at the University of Rio de Janeiro, where he remained until December 1986. Upon his return to Panama, he asked to be reinstated.

5. The petitioner alleges that his "right/duty" to work immediately upon his return from Brazil, was denied until November 1, 1989, when he was appointed to a position for which he had competed. The petitioner seeks to recover benefits and salary not received from December 1986 to November 1989.

6. The petitioner alleges that on July 25, 1985, he signed a contract with the legal authorization of the Panamanian Ministry of Health and the Instituto para el Aprovechamiento de Recursos Humanos (IFARHU) as a beneficiary of the Special Program for Specialty Improvement of Public Servants (Programa Especial para el Perfeccionamiento Especial de los Servidores Públicos) through which he had gone to Brazil for his master's degree, with a right to salary. [FN2] The petitioner also stated that upon completing his studies, the State was obligated to guarantee his reinstatement in his previous position. The petitioner was also obligated, according to the same contract, to work for a time period twice that of his leave for studies, an obligation also stipulated in Law No. 31 of September 2, 1977.[FN3] The petitioner implicitly maintains that the fact that je was not reinstated in his position violates Article 24, the right to equal protection.

[FN2] Contract No. F.P. 85-71, signed by the petitioner, the Minister of Health of the Republic of Panama, Carlos de Sedas, and the Director General of IFARHU, Humberto López Tirone, appears in the Commission's case file.

[FN3] Clauses two and four, number four of Contract No. F.P. 85-71, and Articles 8 and 11 of Law No. 31 of September 2, 1977.

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7. The petitioner alleges that when he asked to be reinstated, he received a tacit refusal from the State, which is why he presented a contentious-administrative action before the Third

Chamber of the Panamanian Supreme Court, which found that the administrative silence by which the petitioner was denied reinstatement was not illegal. The petitioner alleges that he exhausted all domestic remedies. He also holds that his leave with a salary was fraudulently suspended in April 1987, adducing that he had supposedly resigned. He alleges that he was unemployed for 31 months, and was fearful, and unable to start a private practice, since according to clause 6, number 2 of the aforementioned contract, the petitioner would have been required to reimburse the State for the amount of salary he was paid to study if he did not provide services to the sponsoring institution, in this case the Panamanian Ministry of Health.

8. Furthermore, the petitioner declares that he was able to secure a public sector position, which he obtained through a competition on November 1, 1989. However, he alleges that he was given a limited work schedule and a drop in salary, without any acknowledgment of his studies while on leave. The petitioner competed and was hired for another position: in June 1992, he became a "Physician Category I," with his years of graduate study reflected in his pay, but without recognition of the years in which he received no salary, which is why he turned to the Commission to uphold his rights. Due to his lack of remuneration, the petitioner alleges a violation of Article 21, the right to property.

B. The State's position

9. According to the State, on December 27, 1983, the petitioner completed the three- year residency and was qualified as a specialist physician, and even though he had the certification that accredited him as such, he was kept in the same resident physician position while continuing his studies in Brazil with salaried leave and a scholarship from IFARHU. When he returned to Panama and requested reinstatement, the Ministry of Health made no response, tacitly refusing the petitioner's request.

10. The State maintains that "according to the content of Article 2 of Cabinet Decree No. 16 of January 22, 1969 and Articles 1 and 2 of Resolution No. 1 of the Health Technical Council, the resident physician's position exists so that a candidate can complete his courses allowing him to become a specialist physician during a given period at the authorized health institutions (teaching hospitals). The cited legislation clearly shows that the position of resident physician is not, and has never been, permanent.… From the aforementioned it can be concluded that the petitioner did not have the right to reinstatement; consequently, having satisfactorily completed the specialization program, as of April 1 1987, the Ministry of Health removed him from the official roster, and gave his position to another resident physician...." The State added that the petitioner had worked in that position for six years, yet the law stipulates that the terms of resident physicians are for up to five years. The State argues that the petitioner was not deprived of his right to work.

11. The State also maintains that "this does not constitute a violation of the right to property, taking as the reference Article 21 of the Convention or the cited articles of the Panamanian Civil Code."[FN4]

[FN4] Articles 337 and 338 of the Civil Code, state, respectively: “Property is the right to enjoy and dispose of a thing, without any limitations other than those established by law”, and, “No one may be deprived of their property other than by a competent authority and for serious reasons of public utility, always with payment of the corresponding compensation.”
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12. The State holds that the petitioner benefited from an extraordinarily long term as a resident physician, plus the benefit of a salaried leave and a scholarship. The State asserts that had there been inequality before the law, as alleged, there would have been no prejudice to the petitioner, but to those who aspired for the position he occupied for six years. The State also held that the petitioner had exhausted remedies available in Panama’s domestic jurisdiction, further evidence that at all times he enjoyed the right to equal protection and the right to the procedural and constitutional guarantees under Panamanian law.

13. The State attaches to its response the decision of the Third Chamber of the Supreme Court of Panama, which decided the contentious-administrative action lodged by the petitioner against the Ministry of Health. According to this decision, the contract entered into by the petitioner with IFARHU and the Ministry of Health did not oblige the latter to reinstate the petitioner into “a position that is temporary considering the teaching purpose for which it was created, and which can only be filled in through a competition, as provided for by the special rules that establish both the duration of the position and how the resident physician positions are to be filled. These special rules have preference over Article 8 of Law No. 31 of 1977, which, as a general rule, guarantees the reinstatement of public servants who satisfactorily finish their studies, in keeping with Article 14(1) of the Civil Code, which establishes that the provisions on a special matter, or on particular businesses or cases, have preference in their application over those of a general nature. As Article 8 is a general rule, it does not apply in the present case.”

IV. ANALYSIS

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

14. The Commission is competent prima facie to examine this petition. The petitioner has standing to appear and has presented arguments regarding the violation of provisions of the American Convention by agents of a State Party. Panama deposited the instrument of ratification of the American Convention on June 22, 1978, and the facts alleged took place from 1986 to 1989. Nonetheless, the Commission is not competent to examine the alleged violation of Article 6 of the Protocol of San Salvador, because Panama deposited the instrument of ratification for that Protocol on February 18, 1993, after the facts alleged.

B. Other admissibility requirements

15. The petition meets the formal admissibility requirements established in Article 46 of the Convention:

a. The petitioner has exhausted domestic remedies available under Panamanian law. Through the final judgment handed down on December 15, 1995, by the Third Chamber for

Contentious-Administrative Matters of the Supreme Court, the most suitable and efficient method for addressing the issue raised by the petition was concluded, thereby exhausting domestic remedies.

b. The petition was presented within the period established by Article 46(1)(b) of the Convention and Article 38 of the Commission's Regulations.

c. The Commission had not received information to the effect that the present petition is subject to another international proceeding.

d. The petition meets all the formal requirements of Article 46(1)(c) of the Convention, regarding name, nationality, profession, domicile, and signature.

16. However, according to Article 47(b) of the Convention, the Commission shall declare a petition inadmissible when it does not state facts that tend to establish a violation of rights guaranteed by the Convention. Therefore, the Commission will proceed to analyze whether the facts alleged make out a violation of the human rights protected by Articles 21, 24, and 25 of the Convention, invoked by the petitioner.

17. In this case, the petitioner alleges that the State violated the contract signed between it and the petitioner, resulting in a violation of the rights enshrined in Articles 21, 24, and 25 of the Convention, for the reasons stated above. The State alleges that the private-law contract between the parties violates norms of higher rank. The Supreme Court resolved this conflict of laws in favor of the State, explaining that the private-law provisions cited by the complainant can be applied so long as they are not opposed to the public interest; but they are clearly opposed to it in the present case, for through them an attempt is made to secure the reinstatement of a public employee in a position that can only be filled through competition. The Commission recalls, in this regard, that the judicial protection the Convention recognizes includes the right to fair, impartial, and swift proceedings that offer the possibility, but not the guarantee, of a favorable result. In and of itself, an unfavorable result for the petitioner, emanating from a fair trial, does not constitute a violation of the Convention. The Commission does not find a violation of Article 25 of the Convention.

18. The Commission considers that the petition does not contain arguments that merit an analysis of the alleged violation of Article 21, thus the Commission considers that this aspect of the complaint is groundless and out of order.

19. The petitioner also maintains that his right to equal protection was violated because he was not reincorporated into his position as stipulated by Article 8, Law Nº 31 of 1977. The State, for its part, demonstrated that the petitioner received differential treatment to his benefit, putting him in an unequal but better-situated position than his colleagues. Accordingly, the Commission considers that the complaint cannot be based on Article 24 of the Convention; and therefore, the Commission considers that the petition lacks arguments meriting an analysis of the alleged violation of Article 24. Accordingly, the Commission is of the view that this aspect of the complaint is groundless and out of order.

20. In its Report 39/96, the Commission reiterated its "fourth instance" doctrine, emphasizing that it is not an appellate court for reviewing errors of law or of fact that domestic courts may have committed. Specifically, the Commission stated that it:

…is competent to declare a petition admissible and rule on its merits when it portrays a claim that a domestic legal decision constitutes a disregard of the right to a fair trial, or if it appears to violate any other right guaranteed by the Convention. However, if it contains nothing but the allegation that the decision was wrong or unjust in itself, the petition must be dismissed under this formula. The Commission's task is to ensure the observance of the obligations undertaken by the States parties to the Convention, but it cannot serve as an appellate court to examine alleged errors of internal law or fact that may have been committed by the domestic courts acting within their jurisdiction.[FN5]

[FN5] Report Nº 39/96, Case 11.673 Santiago Marzioni, Argentina, October 15, 1996, para. 51.

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21. Accordingly, the analysis of the facts alleged leads to the conclusion that these do not constitute a violation of the rights and guarantees of the American Convention as alleged by the petitioner. On the contrary, an in-depth analysis of the present petition would make the Commission a "fourth instance," or an appellate court for domestic law determinations, since it would be asked to review a decision adopted by a competent organ within its legal powers and in conformity with the laws in force.

V. CONCLUSIONS

22. The IACHR has established that the petition does not meet the requirements of Article 47(b) of the American Convention. Accordingly, the Commission concludes that the petition is inadmissible, under Article 47(b).

23. Based on the foregoing arguments of facts and law,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

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

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on February 23, 2001. (Signed): Claudio Grossman, Chairman; Juan Méndez, First Vice-Chairman; Marta Altolaguirre, Second Vice-Chairman; Commissioners Hélio Bicudo, Robert K. Goldman, Julio Prado Vallejo, and Peter Laurie.