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Decided by: President: Claudio Grossman;
First Vice-President: Juan Mendez;
Second Vice-President: Marta Altolaguirre;
Commissioners: Robert K. Goldman, Peter Laurie, Julio Prado Vallejo, Helio Bicudo.
Dated: 10 October 2001
Citation: M. Z. v. Bolivia, Case 12.350, Inter-Am. C.H.R., Report No. 73/01, OEA/Ser./L/V/II.114, doc. 5, rev. (2001)
Represented by: APPLICANTS: Oficina Juridica para la Mujer, the Latin American and Caribbean Committee for the Defense of Women’s Rights and the Center for Justice and International Law
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I. SUMMARY

1. On November 22, 2000, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the IACHR”) received a complaint submitted by the Oficina Juridica para la Mujer, the Latin American and Caribbean Committee for the Defense of Women’s Rights (CLADEM), and the Center for Justice and International Law (CEJIL) (“the petitioners”) against the Bolivian State (“the State”), alleging the violation of the rights and judicial guarantees of MZ.[FN1] The petitioner argues that the facts alleged constitute violations of several provisions of the American Convention on Human Rights (hereinafter “the American Convention”), in particular, the duty of the states to respect and ensure the rights (Article 1(1)), the right to a fair trial (Article 8(1)), and the right to judicial protection (Article 25); as well as Article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women.

[FN1] Fictitious name. The identity of the alleged victim and of the persons close to her who assisted her are being kept confidential at her express request, and in keeping with the practice of the Inter-American Commission in the case of complaints alleging facts such as those described in this case, whose publication may have a detrimental impact on the privacy of persons (see, e.g., Annual Report of the IACHR 1996, Report Ne 38/96, Case 10.506, X and Y, Argentina;

Annual Report of the IACHR, Report No 53/01, Case 11.565, Ana, Beatriz, and Celia González Pírez, Mexico).

2. According to the petition, the alleged victim MZ was raped on October 2, 1994. Accordingly, she turned to the criminal justice system of the Bolivian State, to have her assailant, Jorge Carlos Aguilar, investigated and punished. The scant punishment imposed by the trial judge led her to appeal the decision, to seek a harsher punishment for the perpetrator, one proportional to the harm caused. Yet the judges who ruled on the appeal adopted the arbitrary and discriminatory decision to acquit him, leaving the rape of which MZ was the victim in impunity.

3. The State considers that the Executive cannot respond to the complaint filed against Bolivia by MZ, since doing so would attack the independence of the judiciary; that the complaint is inadmissible since it was filed after the six-month period established in Article 38 of the previous the Rules of Procedure of the Commission, in force at the time of the complaint, and in Article 46 of the American Convention, had lapsed; that the weighing of the evidence by the judges during the domestic proceedings in Bolivia was done in the exercise of their jurisdiction, in keeping with the statutes and case-law of Bolivia, and with respect for the criteria of prudent judgment and healthy criticism; and that MZ had access to all the remedies provided for in Bolivian legislation.

4. Without prejudging on the merits of the case, in this report the IACHR concludes that the case is admissible, as it meets the requirements set forth in Articles 46 and 47 of the American Convention. Accordingly, the Inter-American Commission decides to notify the parties of this decision and to continue analyzing the merits with respect to the alleged violations of Articles 1(1), 8(1), and 25 of the American Convention, and Article 7 of the Convention of Belém do Pará.

II. PROCESSING OF THE CASE BEFORE THE INTER-AMERICAN COMMISSION

5. The petition was received on November 22, 2000, and forwarded to the Bolivian State on December 14, 2000, as petition number 12.350. The State presented its observations on March 16, 2001, which were forwarded to the petitioners on March 21, 2001. The petitioners requested a 30-day extension to respond to and make observations on the Bolivian State's response. On April 17, 2001, the Commission granted the petitioner a 60-day extension. On June 15, 2001, CEJIL requested a 20-day extension; the IACHR granted a 30-day extension on June 18, 2001. The petitioners submitted observations on the State's response and additional information on July 19, 2001, which were forwarded to the Bolivian State on August 8, 2001; it was given 30 days to respond. On September 11, 2001, the State requested an extension for its submission. The IACHR granted it 30 days from September 14, 2001.

III. POSITIONS OF THE PARTIES REGARDING ADMISSIBILITY

A. The petitioners

6. The petitioners allege that in the early morning hours of October 2, 1994, MZ, 30 years old, of Dutch nationality, single, was attacked and raped at her home by Jorge Carlos Aguilar, the son of the owners of the house she rented. The surprise nature of the attack was such that the victim was initially paralyzed by the terror and physical strength of the assailant, plus the death threats and the motions he made suggesting he was about to pull out a weapon; she then put up resistance, wounding her assailant on the eyebrow with a blunt object. At the crack of dawn, taking advantage of her assailant's carelessness, the victim was able to flee in search of help. The family that occupied the main apartment in the building let her use the telephone, whereupon she called and sought the help of her friends GB and KF, who accompanied her to report the incident and seek medical care.

7. Personnel specialized in criminology came to the crime scene, collected evidence for processing in the laboratory, and took photographs.

8. The investigation by the Judicial Police led to the conclusion that MZ was the victim of the crimes of rape and unlawful entry, and pointed to Jorge Carlos Aguilar as the possible perpetrator; he could not be located that day, despite the efforts of the Technical Judicial Police and INTERPOL. The accused was declared to be contumacious and in contempt. Yet days prior to the conclusion of the period for collecting evidence, he appeared before the judge to give his deposition. On May 26, 1996, Jorge Carlos Aguilar was formally indicted, as there were sufficient indicia pointing to him as the perpetrator of the crime of rape. Once the oral phase of the trial began, the accused Jorge Carlos Aguilar was summonsed to make his confession. Once this phase had concluded, the prosecutor asked that a guilty verdict be returned for the crimes of rape and unlawful entry (allanamiento de domicilio).

9. Finally, the Third Criminal Judge of Cochabamba found that Jorge Carlos Aguilar was the perpetrator of the crime of rape, since there was clear and convincing evidence against him, and he was sentenced to serve five years in prison.

10. Both parties appealed the judgment. At this procedural stage, Jorge Carlos Aguilar, convicted, presented a letter under the heading "written statement" ("declaraciyn escrita") in which he gave a third version of the facts, asserting that it was MZ who sexually assaulted him, in contrast to what she had argued throughout the trial.

11. On October 13, 1997, the Second Criminal Chamber of the Superior Court for the District of Cochabamba, recognized by the Supreme Court of Justice, issued the orders (auto de Vista) in which it absolved Jorge Carlos Aguilar of guilt and reversed the sentence imposed on him for the crime of rape.

12. A motion for cassation was filed against this judgment on October 22, 1997, alleging errors of fact and law in the weighing of the evidence, which was declared UNFOUNDED by the Second Criminal Chamber of the Supreme Court of Justice on April 25, 2000.

13. In the document presenting observations to the response by the Bolivian State, the petitioners state: "The Executive branch of Bolivia should address the complaint put before the Inter-American Commission on Human Rights, since it represents, internationally, all the

branches of government and organs of the State, which are bound by the international obligations acquired by Bolivia.”

14. The petitioners allege that the complaint was submitted within the six-month period established by Article 46(1)(b) of the American Convention. In terms of other admissibility requirements, they state as follows:

The Inter-American Commission on Human Rights is competent to hear this case because the appellate and cassation procedures pursued by the Bolivian jurisdiction are violative of due process and other rights enshrined in the American Convention on Human Rights and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, “Convention of Belġm do Parġ.”

The Bolivian State violated MZ’s right to obtain a reasoned decision (Article 8(1)). The judicial decision is arbitrary, because it is contrary to the evidence and is not adequately founded.

It also violated her right to an impartial judge in the determination of her rights, lacking gender prejudice, who would not discriminate against her (Article 8(1) in conjunction with Articles 1(1) of 24 of the American Convention and Article 7 of the Convention of Belġm do Parġ).[FN2]

[FN2] Communication from the petitioners dated July 19, 2001.

B. The State

15. The Bolivian State alleges that in the case of MZ, the highest courts of Bolivia ruled on her petitions, and the Supreme Court of Justice handed down the Supreme Order of April 25, 2000 in the case pursued by MZ for the crime of rape; this ruling constitutes national case-law for criminal law matters, which makes it impossible for the Executive branch to be able to respond to the complaint filed by MZ before the IACHR.

16. The State is of the view that if the Commission were to correct the alleged irregularities reported by the petitioner, not only would it be assailing the principles of juridical security and judicial independence, but that it would turn the Commission into a review body, which is not consistent with its nature.

17. The Bolivian State understands that the complaint was presented by the petitioners on December 7, 2000, and that the final decision of the Supreme Court of Justice was reported on May 29, 2000 to MZ, as appears from the record. Therefore, in this case, as of May 29, 2000, she had the legal period of six months, i.e. until November 29, 2000, to submit her petition to the IACHR, as provided for by Article 46(1)(b) of the American Convention, consistent with Article 38(1) of the Regulations of the IACHR in force at that time; yet petitioners did not comply with this rule, for based on the information reported to the Bolivian State, the petitioners submitted the complaint on December 7, 2000, through case 12.350, i.e. six months and eight days after the Supreme Court decision, in violation of the legal time period.

18. The Bolivian State considers that the weighing of the evidence by the judges during the development of the whole proceeding in the domestic courts of Bolivia was in keeping with the statutes and case-law, and with respect for the criteria of prudent judgment and healthy criticism, as provided by Article 135 of the Code of Criminal Procedure: “All means of evidence brought forth shall be weighed as a whole by a judicial organ in the use of its prudent judgment and in keeping with the rules of healthy criticism, setting forth, necessarily, the reasoning on which that legal assessment is based.”

19. With the complaint filed by MZ against Jorge Carlos Aguilar, the complainant has used all remedies available to her under Bolivian legislation, and at no point in the proceedings pursued by MZ has she not been allowed, in the use of her rights, to have access to the domestic remedies, nor has she been hindered from exhausting them.

IV. ANALYSIS

A. Competence *ratione personae*, *ratione materiae*, *ratione temporis* and *ratione loci* of the Inter-American Commission

20. The petitioners are authorized by Article 44 of the American Convention to present complaints to the IACHR. Those petitions indicate as victims individual persons with respect to whom Bolivia undertook to respect and ensure the rights enshrined in the Convention. As regards the State, the Commission observes that Bolivia is a state party to the American Convention, having ratified it July 19, 1979. In addition, the IACHR observes that as regards the passive competence *ratione personae*, it is a general principle of international law that the state must answer for the acts of all its organs, including those of its judiciary. Accordingly, the Commission has competence *ratione personae* to hear this petition.

21. The Commission has competence *ratione loci* to hear this petition because it alleges violations of the American Convention within the territory of a state party to said treaty.

22. The Commission has competence *ratione temporis* insofar as the facts alleged in the petition occurred when the obligation to respect and ensure the rights established in the Convention were already in force for the State.

23. As regards the allegations of possible violations of the Convention of Belĭm do Parĭ, the Commission observes that Bolivia ratified that Convention on December 5, 1994. The rape of the victim occurred on October 2, 1994, prior to Bolivia’s ratification. Consequently, the Commission lacks competence *ratione temporis* to consider these facts. Even so, the Commission does have competence *ratione temporis* to apply the Convention of Belĭm do Parĭ to consider facts that occurred after Bolivia’s ratification of that Convention, relating to the alleged denial of justice.

24. Finally, the Commission has competence *ratione materiae* because the petition alleges violations of human rights protected in the American Convention. With respect to petitioners’ allegations regarding violations of Article 7 of the Convention of Belĭm do Parĭ, the

Commission observes that according to Article 12 of the Convention of Belĭm do Parĭ, one can present petitions to the IACHR alleging violations of Article 7 of that Convention by a state party, and the Commission shall consider them, in keeping with the procedural rules and requirements for the presentation and consideration of petitions stipulated in the American Convention on Human Rights and in the Statute and Rules of Procedure of the Inter-American Commission on Human Rights. The Inter-American Commission can use Articles 3 and 6 of the Convention to interpret other provisions applicable in light of Article 29 of the American Convention. Accordingly, the IACHR is competent *ratione materiae* to apply the Convention of Belĭm do Parĭ.

B. Other admissibility requirements

a. Exhaustion of domestic remedies

25. With the filing of the motion for cassation before the Supreme Court of Justice, and its resolution by the Supreme Order of April 25, 2000, denying it as without foundation, and reported to the parties on May 29, 2000, all domestic remedies available under Bolivian law were exhausted.

b. Time for presentation

26. The State argues that petitioners failed to meet the six-month requirement established in Article 46(1)(b) of the American Convention, as it alleges that the complaint was submitted on December 7, 2000. The IACHR observes that the communication has an intake stamp and that it was received at the Executive Secretariat on November 22, 2000. Bearing in mind that the judgment that exhausted domestic remedies was reported on May 29, 2000, the Commission considers that the six-month term for submitting the petition has been met. As regards the note of December 7, 2000, it was the second submission by petitioners, in which they attached reference documents.

c. Duplication of procedures and *res judicata*

27. The record in this case does not contain any information that might lead to a determination that this matter is pending before any other international organization or that it has been decided previously by the Inter-American Commission. Accordingly, the IACHR concludes that the exceptions provided for at Article 46(1)(d) and Article 47(d) of the American Convention do not apply.

d. Characterization of the facts alleged

28. The IACHR considers that the facts alleged, if true, would tend to establish violations of the rights guaranteed in Articles 1(1), 8(1), and 25 of the American Convention, and Article 7 of the Convention of Belĭm do Parĭ.

29. The petitioners do not allege mere errors of fact or law. To the contrary, they argue that the judicial proceeding considered as a whole, and the conduct of the judicial authorities, constitute due process violations.

V. CONCLUSIONS

30. The Inter-American Commission concludes that it is competent to hear this case on the merits, and that the petition is admissible in keeping with Articles 46 and 47 of the American Convention. Based on the foregoing arguments of fact and law, and without prejudging the merits,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible with respect to the alleged violations of the rights protected in Article 1(1), 8(1), and 25 of the American Convention and Article 7 of the Convention of Belém do Pará.
2. To notify the parties of this decision.
3. To continue analyzing the merits issues.
4. 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., October 10, 2001. (Signed): Claudio Grossman, President; Juan Míndez, First Vice-President; Marta Altolaguirre, Second Vice-President; Robert K. Goldman, Peter Laurie, Julio Prado Vallejo, Hélio Bicudo, Commissioners.