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Title/Style of Cause: Anibal Miranda v. Paraguay
Doc. Type: Decision
Decided by: President: Claudio Grossman;
First Vice President: Juan Mendez;
Second Vice-President: Marta Altolaguirre;
Commissioners: Robert K. Goldman, Peter Laurie, Julio Prado Vallejo.
Dated: 10 October 2001
Citation: Miranda v. Paraguay, Case 12.000, Inter-Am. C.H.R., Report No. 82/01, OEA/Ser./L/V/II.114, doc. 5, rev. (2001)
Represented by: APPLICANT: Dr. Dionisio Gauto
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I. SUMMARY

1. In a petition submitted to the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) on November 3, 1997, Dr. Dionisio Gauto (hereinafter “the petitioner”) and Mr. Aníbal Miranda, the alleged victim, claimed that the Republic of Paraguay (hereinafter “Paraguay,” “the State,” or “the Paraguayan State”) had violated Mr. Miranda’s human rights by subjecting him to police harassment, illegal arrest, kidnapping, torture, the illegal confiscation of his passport, and abuses of authority, all in connection with publications dealing with crimes committed during the dictatorship that Mr. Miranda released. They further claimed that none of the perpetrators of those violations had been punished, even though criminal proceedings had been ongoing since 1989, and that in a suit for damages brought by Mr. Miranda against the Paraguayan State in 1997, his right to due process and his right to a fair trial were violated. The State claimed that the remedies provided by domestic jurisdiction had not been exhausted. The Commission decided to admit the case and to continue with its analysis of the merits.

II. PROCESSING BY THE COMMISSION

2. On April 9, 1998, the Commission opened the petition, transmitted the relevant parts of the complaint to the Paraguayan State, and asked it to submit information thereon within a period of 90 days. On May 29, 1998, additional information was received from the petitioner. On September 24, 1998, the Commission asked the State to supply information within a period of 15 days. The State responded on October 20, 1998. On December 21, 1998, the petitioner sent comments on the State’s response. Both parties submitted additional information on several

occasions between then and May of this year. On August 30, 1999, the State said that “it was not in a position to begin a friendly settlement that did not conform to the spirit of Law 838/96.”[FN1] At its 110th session, the IACHR held a hearing at which the parties put forward their points of view regarding the admissibility of this petition.

[FN1] The Paraguayan State did not enact amnesty laws; instead, in 1986, it promulgated Law N° 838. This law provides that no statute of limitations shall apply to crimes against human rights committed under the Stroessner dictatorship, and it also stipulates that reparations for those violations shall be determined by an administrative procedure conducted before the People’s Defender (Paraguay’s ombudsman).

III. POSITIONS OF THE PARTIES

A. Petitioner

3. The petitioner claims that during the second half of the 1970s and throughout the 1980s, Mr. Aníbal Miranda published several books dealing with crimes committed by the Alfredo Stroessner dictatorship; on several occasions he also denounced other aspects of that situation, and these allegations were covered in the press in Paraguay and in other countries.

4. As a result of this, he claims, Mr. Miranda was harassed by the police and the military, beginning with an army intelligence report drawn up in July 1976. He reports that one aspect of this harassment was the December 1980 break-in at Mr. Miranda’s home by a group of police officers and soldiers; his passport was confiscated by the Department of Identifications; in November 1988 he was kidnapped from a public thoroughfare and, although no judicial order had been issued against him, he was sent to prison, where he was tortured, kept in isolation, and denied visits by relatives and lawyers.

5. He reports that following those violations, Mr. Miranda attempted to bring criminal action to punish the perpetrators; he also filed suit against the Paraguayan State in a bid to secure compensation for the harm he had suffered as a result of the human rights violations committed by the State’s agents.

6. Regarding the criminal action filed by the alleged victim, the petitioner states that in March 1989, Mr. Miranda filed criminal proceedings against Sabino A. Montanaro (then Paraguay’s Interior Minister), Alcibiades Britez Borges (then the capital’s Chief of Police), and others, for illegal arrest, kidnapping, torture, and abuse of authority.[FN2] In reprisal, two criminal committal proceedings were opened against him and a warrant was issued for his arrest; subsequently, Judge Nelson A. Mora initiated a third committal criminal proceeding, as a result of which Mr. Miranda was kept under arrest from March through July 1991. Both the aforesaid criminal suit and a complaint that Mr. Miranda later filed against Judge Nelson A. Mora before the Magistrates Disciplinary Board were unsuccessful; instead, a series of obstacles and substitutions paralyzed those proceedings, including the exclusion of Mr. Miranda from the trial of Sabino A. Montanaro and others. The petitioner also reports that none of the persons against

whom Mr. Miranda brought criminal charges were arrested: Sabino A. Montanaro did not appear before the court because he was in exile in Honduras, and Alcibiades Britez Borges did not face trial.

[FN2] On August 30, 1999, the State said that these proceedings were being processed by the 6th Criminal Court, Secretariat 11.

7. With regard to the suit filed against the Paraguayan State to secure compensation for the harm suffered by Mr. Miranda as a result of the alleged human rights violations, the petitioner claims that in May 1997 Mr. Miranda filed suit against the Paraguayan State for damages arising from the violation of his rights; these proceedings have not yet been resolved, and the petitioner claims that the State has adopted a strategy of systematically obstructing Mr. Miranda's claims for compensation.

B. State

8. In its reply of October 16, 1998, the State included a copy of a report by the Ministry of Justice and Labor. This report indicates that:

From the report of the Public Prosecution Service, Office of the Attorney General of the State, Department of Human Rights, drawn up by Prosecutor Lourdes Acevedo Acosta on September 15 of this year, the dossier titled "Sabino Augusto Montanaro and Aurelio Cáceres Spelt in Abuse of Authority and Illegal Arrest" at the 6th Criminal Court, 11th Secretariat, has as its latest development A.I. No. 1347 of July 3, 1997, the resolute part of which reads as follows: '(1) To disallow the extension of the committal proceedings. (2) To annul the proceedings reported in the case file.' The case is not currently lodged with the Court.

9. The State added that, in accordance with the above, "in the case referred to in this petition, the remedies provided by domestic jurisdiction have not been exhausted," and it listed a number of provisions contained in Paraguayan law.

10. Later, on April 25, 2001, the State informed the Commission that although Mr. Miranda was no longer an instigator in the criminal proceedings against Sabino Montanaro and others, following the withdrawal motion presented in favor of one of the defendants, the judge had decided that:

In consideration of the nature of the matter under investigation, which is a criminal action, publicly prosecutable on an ex officio basis, and in compliance with the provisions of Articles 16 (paragraph 1), 17, and 20 of the relevant criminal law; it should be pursued at the initiative of the Public Prosecution Service.

11. On August 30, 1999, the State submitted a document to the IACHR, in which it said:

It should be noted that there were many cases of human rights violations under the dictatorship (1954 to 1989), and the State's position on the matter is that compensation given to the victims or their families should observe equitable guidelines to ensure that new injustices are not committed as we repair the harm caused by those violations.

In this regard, the Government holds that one valid instrument for that purpose is Law 838/96 of September 12, 1996, which "compensates the victims of human rights violations during the 1954-1989 dictatorship"; this law benefits individuals of any nationality who, under the dictatorship in power in Paraguay during the period indicated, had their human rights to life, personal integrity, or freedom violated by officials, employees, or agents of the State.

As the Commission already knows, although Law 838 is in force, it is not applicable because we do not have a People's Defender who, in accordance with the law, would be the person responsible for examining compensation claims. It should be noted that during the Commission's recent on-site visit, the authorities offered specific undertakings toward ensuring the promptest appointment of a People's Defender. (...)

In this case, as in all the other cases involving human rights violations committed by the dictatorship, the material reparations and other forms of compensation are provided for by Law 838. The State is therefore not in a position to begin a friendly settlement that does not conform to the spirit of the aforesaid law which, using notions of equity, is an attempt to offer historic amends to the dictatorship's victims.

IV. ANALYSIS

A. Competence of the Commission *Ratione Materiae*, *Ratione Personae*, and *Ratione Temporis*

12. The petitioners are entitled, under Article 44 of the American Convention, to lodge complaints with the IACHR. The petition names, as its alleged victims, individual persons with respect to whom Paraguay had assumed the commitment of respecting and ensuring the rights enshrined in the American Convention. As regards the State, the Commission notes that Paraguay has been a party to the American Convention since August 24, 1989, when it deposited the corresponding instrument of ratification. The Commission therefore has competence *ratione personae* to examine the complaint.

13. The Commission has competence *ratione loci* to hear the petition, since it alleges violations of rights protected by the American Declaration and the American Convention occurring within the territory of a state party thereto.

14. The Commission has competence *ratione temporis*, since the obligation of respecting and ensuring the rights protected by the American Declaration and the American Convention was already in force for the State on the date on which the incidents described in the petition allegedly occurred. The Commission points out that some of the alleged violations of Mr. Miranda's human rights began prior to August 24, 1989, the date on which Paraguay ratified the American Convention; as a result, the source of law applicable thereto is the American

Declaration. Both the Court and the Commission have ruled that the American Declaration is a source of international obligations for OAS member states.[FN3] The violations of Mr. Miranda's right to a fair trial and right to judicial protection, which allegedly occurred during the legal proceedings he initiated in May 1997, must be analyzed in accordance with the American Convention. Finally, with respect to the violations of the right to a fair trial and the right to judicial protection that allegedly occurred during the proceedings initiated by Mr. Miranda in March 1989—before Paraguay's ratification of the American Convention in August of that year—the IACHR recently confirmed “its practice of extending the scope of application of the American Convention to facts of a continuing nature that violate human rights prior to its ratification, but whose effects remain after its entry into force.”[FN4] Similarly, the Commission has ruled that “once the American Convention entered into force (...) the Convention and not the Declaration became the source of legal norms for application by the Commission insofar as the petition alleges violations of substantially identical rights set forth in both instruments and those claimed violations do not involve a continuing situation.”[FN5]

[FN3] See: Inter-American Court of Human Rights, Advisory Opinion OC-10/89, Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights, July 14, 1989, Ser. A. No. 10 (1989), paragraphs 35-45; IACHR, James Terry Roach and Jay Pinkerton vs. United States, Case 9647, Res. 3/87, September 22, 1987, Annual Report 1986-1987, paragraphs 46-49, and Rafael Ferrer-Mazorra et al. vs. United States of America, Report N° 51/01, case 9903, April 4, 2001. See also: Statute of the Inter-American Commission on Human Rights, Article 20.

[FN4] IACHR, Report N° 95/98 (Chile), December 9, 1998, Annual Report of the Inter-American Commission on Human Rights, 1998, paragraph 27.

[FN5] IACHR, Report N° 38/99 (Argentina), March 11, 1999, Annual Report of the Inter-American Commission on Human Rights, 1998, paragraph 13.

15. Finally, the Commission has competence *ratione materiae*, since the petition describes violations of human rights protected by the American Declaration and by the American Convention.

16. The Commission will now proceed to analyze whether the case at hand meets the requirements for admissibility set by Articles 46 and 47 of the American Convention.[FN6]

B. Admissibility Requirements

a. Exhaustion of Domestic Remedies

17. The Commission notes that following the alleged violations suffered by Mr. Miranda, he initiated criminal proceedings under Paraguayan jurisdiction with the aim of ensuring that the perpetrators were punished; he also sued the Paraguayan State for compensation for the harm he suffered as a result of those violations of his human rights.

18. In an attempt to determine criminal responsibilities for the human rights violations he had suffered, in March 1989 Mr. Miranda initiated criminal proceedings against Sabino A. Montanaro (then Minister of the Interior), Alcibiades Britez Borges (then Chief of Police in the capital), and others, for illegal arrest, kidnapping, torture, and abuse of authority. With regard to these proceedings, the Paraguayan State at first maintained that the remedies provided by domestic jurisdiction had not been exhausted. Later, the State claimed that within that same suit, Mr. Miranda had requested that the criminal committal proceedings be expanded to include former President Alfredo Stroessner. In formulating that request, Mr. Miranda withdrew the suit lodged against one of the several defendants, Aurelio Cáceres Spelt, and that withdrawal benefited the remaining defendants through the application of Article 123 of the adjective criminal code. In a final note sent to the Commission in response to a request for information regarding the competence of the Public Prosecution Service and about whether steps had been taken in connection with the extradition of Alfredo Stroessner, the Paraguayan State said that:

Even though the private citizen has withdrawn, the publicly prosecutable criminal actions are still being pursued on an ex officio basis by the Public Prosecution Service.

The Public Prosecution Service is legally obliged to conduct investigations into publicly prosecutable criminal acts, and this has been the case in these proceedings, during which it has requested that certain steps be taken. (...)

With regard to the endeavors of the Public Prosecution Service, the Attorney General of the State ordered the Court to take a series of steps, which have not yet been carried out. (...)

Alfredo Stroessner is not included in these proceedings, although there are others in which he does feature.

19. The Commission notes that Article 46(2)(a) of the American Convention provides that the requirement of exhausting the remedies provided by domestic jurisdiction shall not apply when “there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.”

20. Under that provision, and noting that more than twelve years have gone by since the criminal proceedings were initiated and not even a first-instance sentence has been handed down, the Commission holds that in the case at hand, the aforesaid exception to the requirement of exhausting domestic remedies is applicable. This decision is further based on the Public Prosecution Service’s legal obligation of pursuing the investigation of publicly prosecutable crimes, even when the original complainant has withdrawn.

21. Regarding the suit Mr. Miranda filed in May 1997 in an attempt to secure compensation from the Paraguayan State for the violations of his human rights, the Commission notes that pursuant to the State’s claims of August 30, 1999, (paragraph 11, above), the appropriate resource available to Mr. Miranda for obtaining reparations would be the mechanism set forth in Law 838/96. Under that law, claims for compensation by persons who “had their human rights to life, personal integrity, or freedom violated by officials, employees, or agents of the State”

during “the dictatorship in power in Paraguay between 1954 and 1989” must be lodged with the People’s Defender.

22. Although the office of the People’s Defender was created by the 1992 Paraguayan Constitution, the holder of the office has not yet been selected by the Paraguayan Congress. The Commission consequently notes that Mr. Miranda has not enjoyed access to the ideal means for submitting his claim.

23. The Commission believes that this also constitutes an exception to the prior exhaustion requirement: as indicated by Article 46(2)(a) and (b) of the American Convention, this requirement does not apply when “domestic legislation (...) does not afford due process of law for the protection of the right or rights that have allegedly been violated” and when “the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them.” However, through its courts, the Paraguayan State has been pursuing ordinary civil proceedings to resolve the compensation claim filed by Mr. Miranda; with this, in principle, the State would appear to have provided the petitioner with an alternative mechanism to the one established by Law 838/96.

24. However, the legal channels to which the alleged victim turned as a result of the real absence of the specific and effective mechanism provided for under Paraguayan law cannot be considered an ideal or efficient alternative for pursuing the goals sought by Mr. Miranda since, after four years, the court in question has not even handed down a first-instance ruling.

b. Timeliness of the Petition

25. As regards the requirement set forth in Article 46(1)(b) of the Convention—that a petition be lodged within a period of six months from the date on which the alleged victim was notified of the final judgment exhausting domestic remedies—the Commission notes that this provision is not applicable in the instant case; this is because if the exception to the prior exhaustion rule is admissible, as is indicated in the preceding paragraphs, then, pursuant to Article 46(2) of the Convention, an exception also applies to the requirement of timely filing. Under Article 32(2) of the IACHR’s Rules of Procedure, in cases in which the exceptions to the prior exhaustion requirement are applicable, the petition must be presented within what the Commission deems to be a reasonable period of time. In this specific situation, the Commission takes into consideration the date on which the alleged violations occurred, the context within which they took place, and the procedural steps taken by the petitioner, and it concludes that the petition was lodged within a reasonable delay.

c. Duplication of Procedures

26. The Commission understands that the substance of the petition is not pending before any other international agency and that it has not been previously studied by the Commission or any other international body. Hence, the requirements set forth in Articles 46(1)(c) and 47(d) of the Convention have been met.

d. Characterization of the Alleged Facts

27. The Commission believes that the petitioners' claims describe incidents that, if true, could tend to establish a violation of rights enshrined in the American Declaration and American Convention.

V. CONCLUSIONS

28. The Commission believes that it is competent to hear this case and that under Articles 46 and 47 of the American Convention, the petition is admissible, in the terms outlined above.

29. Based on the foregoing considerations of fact and law, and without prejudging the substance of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible as regards the alleged violations of Articles I, XVIII, XXV, and XXVI of the American Declaration of the Rights and Duties of Man and the alleged violations of Articles 8 and 25 of the American Convention.
2. To give notice of this decision to the alleged victim, to the petitioner, and to the State; and,
3. To publish this decision and to include it in its Annual Report to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights on the tenth day of October, 2001. (Signed): Claudio Grossman, President; Juan Méndez, First Vice-President; Marta Altolaguirre, Second Vice-President; Commissioners Robert K. Goldman, Peter Laurie, and Julio Prado Vallejo.