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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 1/02; Petition 12.296
Session: Hundred and Fourteenth Regular Session (25 February – 15 March 2002)
Title/Style of Cause: Ruben Ayala Bogado v. Paraguay
Doc. Type: Decision
Decided by: President: Juan Mendez;
First Vice-President: Marta Altolaguirre;
Second Vice-President: Jose Zalaquett;
Commission members: Robert K. Goldman, Julio Prado Vallejo, Clare K. Roberts.
Dated: 27 February 2002
Citation: Ayala Bogado v. Paraguay, Petition 12.296, Inter-Am. C.H.R., Report No. 1/02, OEA/Ser.L/V/II.117, doc. 1 rev. 1 (2002)
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I. PETITIONER

1. Rubén Ayala Bogado.

II. ALLEGED VICTIM

2. Rubén Ayala Bogado (hereinafter “the alleged victim”).

III. ALLEGED VIOLATIONS

3. Articles 8 and 25(2)(c) of the American Convention on Human Rights (hereinafter “the Convention”); and Article 8 of the Protocol of San Salvador (hereinafter “the Protocol”).

IV. SUMMARY OF THE COMPLAINT

4. On July 29, 1999, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission”, “the Commission”, or “the IACHR”) received a petition lodged by Mr. Rubén Ayala Bogado (hereinafter “the petitioner”), against the Republic of Paraguay (hereinafter “the State” or “Paraguay”) alleging violation of rights enshrined in Articles 8 and 25(2)(c) of the American Convention and 8 of the Protocol to the detriment of Rubén Ayala Bogado, union leader and public servant at the Ministry of Industry and Trade of Paraguay. The petitioner claims that he was the victim of systematic persecution for having denounced fraud in the public administration of former minister Ubaldo Scavone.

A. The Petitioner

5. In the instant case the petitioner alleges that in 1994, in his capacity as a public servant and union leader at the Ministry of Industry and Trade, he filed an accusation with the Paraguayan national authorities[1] alleging embezzlement of public monies by Minister Ubaldo Scavone, who headed the administration of the aforesaid Ministry. The accusation was duly admitted by the Office of the Inspector-General and examined by the Congress. In 1995, the Second Chamber of the Government Accounting Office issued Decision N° 9 in which it rejected the accusation.

6. As a result of the above events the petitioner alleges that the Minister prohibited his entry to the Ministry. Therefore, he proceeded to file a complaint, which was decided in his favor, and the court ordered that he be granted free access. However, Mr. Scavone refused to obey the court order.

7. The petitioner again went to court and filed criminal charges against the Minister. With respect to that proceeding, the petitioner alleges that the decisions rendered by the lower criminal court, as well as by the Third Chamber of the Court of Appeal, violate due process for failure to conduct a preliminary enquiry into serious and well-founded charges alleging publicly actionable criminal offences. The petitioner further says that the Constitutional Chamber of the Supreme Court failed to reverse those arbitrary judgments by granting the writ of unconstitutionality that he presented in good time. Subsequently Mr. Ayala filed a motion for clarification and recusation of the members of the Constitutional Chamber of the Supreme Court and he alleges that the motion was unfairly rejected and he was given a fine as punishment.

8. Finally, the petitioner says that the Minister instituted two baseless criminal complaints against him, as well as two administrative enquiries. He says he was not given the opportunity to speak in those enquiries and, as a result of them, he has been dismissed from his public duties. He alleges that in both enquiries he was denied his due process guarantees. Based on the foregoing he considers that his rights to a fair trial and judicial protection were violated, as were his union rights, given his dismissal and the fact of being a union leader.

9. Based on these allegations, the petitioner asks the Commission to find the State responsible for violation of the following human rights: a) the right to a fair trial (Article 8) and the right to judicial protection (Article 25), both enshrined in the American Convention; and trade union rights under Article 8 of the Protocol.

B. The State

10. The State says that all the assertions made by Mr. Ayala Bogado before the IACHR reflect disagreement with the result of the different proceedings in which he was involved; however, mere disagreement is not sufficient grounds to institute an international proceeding if such facts cannot be proven in that proceeding either.

11. The State holds that the petitioner has exercised his right of defense at every procedural stage and that most of the criminal proceedings ended in a settlement between the petitioner and the complainants before notaries public; and in the other criminal actions the court ruled in his

favor. Furthermore, the State argues that neither persecution nor impunity may be deduced from the multiple judicial proceedings in which the petitioner was involved.

V. PROCESSING BY THE COMMISSION

12. On July 29, 1999, the IACHR received a petition from Mr. Ayala Bogado. On June 23, 2000, in accordance with Article 34 of its Regulations then in force, the IACHR sent the pertinent portions of the original petition to the State and gave it 90 days to present its comments, pursuant to Article 37 of said Regulations. On October 17, 2000, the State of Paraguay sent to the Commission the record of the court proceedings in the case “Ubaldo Scavone concerning contempt of court in this capital”, without specifically addressing the terms of the petition. On November 8, 2000, the Commission transmitted the pertinent portions of the State’s reply to the petitioner, and said to him that he had 30 days in which to advance the observations he deemed appropriate. The Commission received the petitioner’s reply on December 11, 2000.

13. The pertinent portions of the additional information presented by the petitioner were forwarded to the State on January 31, 2001. On March 5 of that year, the State of Paraguay requested the IACHR for an extension of the deadline to present its observations. On March 8, the Commission granted the State of Paraguay an extension of 30 days. The State submitted its reply on April 12, inside the deadline of the extension granted, and the pertinent portions thereof were transmitted to the petitioner on April 16.

14. Subsequently, on August 29, the Commission received a communication from the State of Paraguay, which informed that the Minister of Industry and Trade had reported on August 21 that Mr. Rubén Ayala Bogado had been reinstated in the Ministry, that the recent budget increase presented by said Ministry contained the amount corresponding to wages and bonuses from January 1996 to January 1998, which sum included the public servant in question, and, finally, that the petitioner engages in activities as Secretary General of the Union of Public Employees of the Ministry of Industry and Trade. In light of the information received, on September 4, 2001, the Inter-American Commission asked the petitioner to present his comments within 15 days. Those comments were received on September 17, and it transpires from them that Mr. Ayala Bogado has indeed been reinstated in his work duties at the Ministry and that he has resumed his union activities.

VI. ANALYSIS AND CONCLUSIONS

15. Article 47(b) of the American Convention provides that:

The Commission shall consider inadmissible any petition or communication submitted under Articles 44 or 45 if:

[...]

b. the petition or communication does not state facts that tend to establish a violation of the rights guaranteed by this Convention; [...]

16. The Commission finds that in accordance with Article 47(b) of the Convention, and based on information received from both parties, the acts that gave rise the original petition, as well as the later developments that occurred, do not tend to establish a violation of the rights guaranteed by this Convention.

17. In the instant petition, based on the information received from the State and confirmed by the petitioner, it is clear that after the petitioner lodged the petition, the alleged violations of the rights to a fair trial (Article 8) and to judicial protection (Article 25) recognized in the Convention, and of the trade union rights (Article 8 of the Protocol) caused by his dismissal from public duties, ceased to exist with the reinstatement in the Ministry of Industry and Trade of Mr. Ayala Bogado, the pledge from the Government to pay the wages he ceased to received when he was dismissed, and his free pursuit of union activities. Accordingly, since the facts or situations alleged by the petitioner do not currently exist, the Commission concludes that the facts stated in the petition do not tend to establish violations of the rights protected by the American Convention.

Based on the above factual and legal considerations,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant case inadmissible in accordance with Article 47(b) of the American Convention on Human Rights.
2. To advise the State and the petitioner of this decision.
3. To make public this decision and include it in the Annual Report of the IACHR to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in Washington, D.C., on this the 27th day of February 2002. (Signed): Juan Méndez, President; Marta Altolaguirre, First Vice President; José Zalaquett, Second Vice President; Commission members: Robert K. Goldman, Julio Prado Vallejo, and Clare K. Roberts.