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Session: Hundred and Fourteenth Regular Session (25 February – 15 March 2002)
Title/Style of Cause: Jesus Chucry Zablah and Claudia Esther Rodríguez de Zablah v. Honduras
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: Chucry Zablah v. Honduras, Petition 12.114, Inter-Am. C.H.R., Report No. 22/02, OEA/Ser.L/V/II.117, doc. 1 rev. 1 (2002)
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I. SUMMARY

1. On June 10, 1997, Mr. Jesús Chucry Zablah and his wife, Claudia Esther Rodríguez de Zablah (hereinafter “the petitioners”) filed a complaint with the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) against the Republic of Honduras (hereinafter “Honduras,” “the State,” or “the Honduran State”). The petition alleged the violation of the right to a fair trial (Article 8), the right to private property (Article 21), and the right to equality before the law (Article 24) of the American Convention on Human Rights (hereinafter “the Convention” to the detriment of the petitioners).

2. The petitioners, shareholders in the company Sociedad Inmobiliaria “La Soledad S. de R.L.” (hereinafter “Sociedad Inmobiliaria”), signed, along with two natural persons, a contract with the State for the sale of three lots for a value of three million lempiras. That contract was later annulled by judgment of November 13, 1981. The judgment ordered that the parties be restored to their status ex ante the contract, and ordered the attachment of two bank accounts that the petitioners had in the Bank of America and the Banco El Ahorro Hondureño, for the purpose of returning to the State the amount of three million lempiras. Later, it ordered the attachment of other real properties belonging to them, which were subjected to expert appraisal and then auctioned.

3. The petitioners allege that due process was violated in the course of the proceeding, as the judge of first instance handed down a judgment before the evidence was produced, and declared the nullity of the contract on its own initiative, after issuing an executive decree disapproving the sale contract. In addition, they argue that the freezing of their accounts was illegal, and that their assets were undervalued, as they paid the State ten times more than what

they were under an obligation to return to it. They argue that the judgment and the expert opinion assessing the real property were plagued by several procedural irregularities that rendered them defenseless, and which resulted in the confiscation and flagrant dispossession of their properties.

4. The parties debated extensively the exhaustion of domestic remedies and the time period for submission of the petition. The petitioners alleged that they exhausted domestic remedies and that the petition was submitted within the six-month time period. The State alleged that domestic remedies had not been exhausted, and that, even if they had been, the petition was time-barred, as it was not submitted within the six-month time period.

5. After analyzing the facts alleged and the documentary evidence in the record, the Inter-American Commission, during its 114th session, held February 25 to March 15, 2002, decided to declare the instant case inadmissible for failure to exhaust domestic remedies, as required by Article 46(1)(a) of the American Convention.

II. PROCESSING BEFORE THE COMMISSION

6. On June 10, 1997, the Commission received the complaint from the petitioners, the original date of which was May 29, 1997. On November 4, 1997, the petitioners were sent acknowledgment that the complaint had been received, informing them that it was not possible to process the complaint, under Article 38(1) of the Regulations, and requesting that they submit information that would make it possible to verify whether the complaint had been filed within a reasonable time.

7. On December 19, 1997, the Commission received a communication dated December 10, that indicated that the complaint did meet the requirements of Article 38(1) of the Commission's Regulations. On June 5, 1998, the Executive Secretariat of the Commission acknowledged receipt of that note and reiterated to the petitioners that the information contained in the complaint did not meet the requirements established in Article 38(1) of the Regulations, and they were invited to send the pertinent information to allow the processing of the complaint to go forward. On February 11, 1999, the petitioners sent a copy of a resolution issued by the Secretariat of the Supreme Court of Justice dated January 6, 1999, in which the motion for reinstatement (*recurso de reposición*) filed by the petitioners was declared inadmissible.

8. On April 12, 1999, the complaint was forwarded to the Honduran State. On September 21, 1999, the Commission received the State's response, dated July 9, 1999. On October 26, 1999, the pertinent parts of that brief were sent to the petitioners. On December 17, 1999, the IACHR received the petitioners' observations, which were transmitted to the government on January 24, 2000. On February 17, 2000, the IACHR received an addendum from the petitioners to their observations, which were transmitted to the State on March 1, 2000; it was given 30 days to submit its final comments. On June 23, 2000, the IACHR reiterated its request to the State for comments on the petitioners' observations, and gave it an additional 30 days.

9. On September 5, 2000, the IACHR received the State's final comments on the petitioners' observations and the addendum they filed, dated August 30, 2000. On September 13, 2000, acknowledgment was sent of that communication, and the pertinent parts were forwarded

to the petitioners. On October 4, 2000, the IACHR received the petitioners' observations to the State's final comments, the pertinent parts of which were forwarded to the State on October 16, 2000; it was given 20 days to submit its comments, in the event that a new fact or argument was included.

10. On September 11, 2001, the Honduras State submitted its comments to the IACHR; the IACHR acknowledged receiving them, and forwarded them to the petitioners on September 20, 2001. On December 20, 2001, the petitioners sent their answer to those comments, which was received at the Commission on January 2, 2002. On January 8, 2002, the IACHR acknowledged receiving it from the petitioners, and forwarded the pertinent parts to the State.

III. THE PARTIES' POSITIONS

A. Petitioners' position

11. The petitioners alleged that the Honduran State violated their rights to a fair trial, to private property, and to equality before the law, on declaring the absolute nullity of a notarized document for purchase (Escritura Pública de Compra-venta) by means of which the Honduran State acquired several real properties consisting of lots owned by the Sociedad Inmobiliaria (legally represented by Mr. Jesús Zablah) and Mrs. Rodríguez de Zablah, among others. They allege that there were fraudulent machinations and direct intervention by other branches of government in that judicial decision, by which, they argue, their property was confiscated,[FN1] flagrantly dispossessing them, as the value of the amounts they were obligated to return to the Honduran State was more than 1000% their value.[FN2]

[FN1] See Note from attorney Milton Jiménez Puerto to the Executive Secretariat, dated December 19, 2001.

[FN2] See Complaint in case 12.114, received at the IACHR June 10, 1997.

12. The petitioners alleged that they exhausted all domestic remedies afforded by Honduran legislation: appeal, cassation, review, and reinstatement, successively, and that all were rejected by the State.[FN3]

[FN3] See Complaint in case 12.114, received at the IACHR June 10, 1997.

13. The petitioners indicated that on October 22, 1981, the Office of the Attorney General of the Republic filed a Regular Action for Absolute Nullity of a Sales Contract against the Sociedad Inmobiliaria, requesting cancellation of their entry in the Property Registry and rescission of the contract. Later, the trial was opened for evidence, and interrupted on November 13, 1981 by the same court that heard the matter, which, on its own initiative, issued the judgment annulling the notarized documents that were the subject matter of the litigation, and canceling their registration, which, they alleged, is not allowed by Honduran legislation.[FN4] The petitioners

indicated that as a precautionary measure, real properties and personal bank accounts at the Bank of America and Banco El Ahorro Hondureño were attached; and that later, in the execution of the judgment, the amounts of 2,037.378.67 lempiras and 4,999.50 lempiras, deposited, respectively, in those accounts, were transferred to the State.

[FN4] See Complaint in case 12.114, received at the IACHR June 10, 1997.

14. The petitioners argued that the Sociedad Inmobiliaria was a limited liability company, thus the State could proceed only against the company's assets, and not against the individual assets of the shareholders, and they allege that with the issuance of that judgment, they were rendered defenseless, since they were hindered from offering evidence on their own behalf.[FN5] They argue that Mr. Jesús Zablah was never heard in the trial, even though their bank accounts and assets were attached.[FN6]

[FN5] See Complaint in case 12.114, received at the IACHR June 10, 1997.

[FN6] See Note from attorney Milton Jiménez Puerto to Executive Secretary Jorge Taiana, dated December 17, 1999.

15. In relation to the attachment of their assets, the petitioners alleged a series of procedural violations, inter alia, that the State, on requesting the precautionary measure of attaching movables and real properties, did not determine their amount, nor did it establish any bond or security interest sufficient to answer for the damages caused, and that the procedure for appointing the expert appraisers was completely illegal. They argued that during the trial, no legal time period was established for the experts to give their opinion as to the value of the assets attached, and that later they were given late notice of the time period, thus they filed their opinion 23 days after the time period has lapsed. They adduce that this rendered them defenseless, as they were hindered from showing the real value of the real properties attached, and that the expert report should have been prepared during the trial, and not in the stage of executing the judgment.[FN7]

[FN7] See Complaint in case 12.114, received at the IACHR June 10, 1997.

16. In addition, the petitioners alleged that, whereas the sum owed was three million lempiras, real properties of theirs worth 10 million lempiras were auctioned, and that in the process of valuing the properties auctioned, there were several irregularities that violated the petitioners' right to property.[FN8]

[FN8] See Note from attorney Milton Jiménez Puerto to Executive Secretary Jorge Taiana, dated December 17, 1999.

17. They argued that the excessive amount was unjustifiable, for in the worst of cases, the liability of the company, in addition to the amount of three million lempiras, would consist solely of the economic profit obtained on serving as an intermediary in the sale, and that said obligation did not even exist, as the contractual relationship was between the Honduran State and the sellers of the real properties, such that if, for reasons beyond their control, the contractual relationship between the State and the sellers was annulled, the Sociedad Inmobiliaria would not be obligated to return a single cent. They added that in the event that someone had to answer for those economic benefits, that obligation corresponded solely to the persons who signed the contract in their personal capacity.[FN9]

[FN9] See Petitioners' observations to the Government's answer of August 30, 2000, of October 4, 2000.

18. With respect to the dispute between the petitioners and the State as to whether domestic remedies were exhausted with the motion for review or the motion for reinstatement, the petitioners argued that domestic remedies were exhausted with the motion for reinstatement, and they showed that it was filed on November 5, 1996, and resolved by the judiciary three years later, on January 6, 1999.

19. In terms of the motion for review, they indicated that it was resolved on November 28, 1996, that notification thereof was made on November 27, 1996, and that the judgment was firm as of November 29, 1996; accordingly, in their view, even in the event that this remedy were considered the remedy by which domestic remedies were exhausted, the petition, sent to the IACHR on May 29, 1997, would meet the six-month requirement provided for at Article 46(1)(b) of the American Convention.[FN10] In response to what the State said about rejection of the motion for review for failure to annex a judgment showing the existence of fraudulent machinations by the Judiciary, the petitioners alleged that at that moment it was impossible to bring the corresponding criminal action, because as of that date the person who was the principal judge at the court that heard the matter during the processing of the case had died.[FN11]

[FN10] See Note from attorney Milton Jiménez Puerto to Executive Secretary Jorge Taiana, dated December 17, 1999.

[FN11] Petitioners' observations to the Government's answer of August 30, 2000, of October 4, 2000.

20. The petitioners argue that they filed both remedies because, in addition to the motion for review, the motion for reinstatement is provided for in the Code of Procedures as an ordinary remedy that must be exhausted prior to having access to the following domestic appeals or recourse to international mechanisms.[FN12]

[FN12] See Addendum a las Observaciones a la Contestación Gubernamental, provided by Mr. Jesús Zablah to the Executive Secretariat of the IACHR, February 24, 2000.

21. In addition, the petitioners indicated that they did not continue to pursue a regular cause of action for damages, as it was totally inadmissible,[FN13] since the illegality of the judgment of first instance was never declared, thus this action would have had no possibility at all of success. In addition, they alleged that there was a final judgment annulling the contract, and so in an action for damages the trial in question would not be re-opened, that the processing of such an action usually takes five to ten years, and that the Honduran judicial system at that time lacked even a bare minimum of independence in issuing its decision, thus it would be useless to exhaust this remedy.[FN14]

[FN13] See Addendum a las Observaciones a la Contestación Gubernamental, provided by Mr. Jesús Zablah to the Executive Secretariat of the IACHR, February 24, 2000.

[FN14] See Note from attorney Milton Jiménez Puerto to Executive Secretary Jorge Taiana, dated December 17, 1999.

B. The State's position

22. The State argued that the purchase contract omitted approval of the contract by the Executive branch, which is a formal requirement for validity,[FN15] which is why the nullity of the sales contract was declared. It noted that during the trial, the President of the Republic issued decree N° 0779, by which it disapproved the sales contract that gave rise to the dispute, and indicated that the Civil Code of the Republic of Honduras establishes that when there is absolute nullity of acts and contracts, the courts must, when it so appears in the record, so declare on its own initiative. He argued that in the present case, the judge so ruled considering that it did not make sense to pursue the other phases of the trial with the consequent squandered time and effort, considering that the agreement issued by the Executive declared the absolute nullity of the contract itself.[FN16] In addition, it indicated that the petitioners attacked only the formal or procedural aspect, decreeing the nullity of the sales contract challenged, without controverting its material nullity.[FN17]

[FN15] See Official Note N° 215-DDHN, Note from the Ministry of Foreign Affairs of the Republic of Honduras to Executive Secretary Jorge Taiana, dated August 30, 2000, p. 11.

[FN16] See Official Note N° 081-DDHN from the Ministry of Foreign Affairs of the Republic of Honduras to Executive Secretary Jorge Taiana, dated July 9, 1999.

[FN17] See Official Note N° 191-DGAE from the Ministry of Foreign Affairs of the Republic of Honduras to Executive Secretary Jorge Taiana, dated September 11, 2001.

23. The State alleged that the fact that the courts had ruled against the petitioners' claims does not entail a violation of the right to defense or of any other human right.[FN18]

[FN18] See Official Note N° 191-DGAE from the Ministry of Foreign Affairs of the Republic of Honduras to Executive Secretary Jorge Taiana, dated September 11, 2001.

24. The State indicated that it had paid three million lempiras to the Sociedad Inmobiliaria for the sale of three lots, and that upon declaration of the nullity of the contract, it was ordered that full restitution be made to the parties to their status ex ante the contract, such that the Honduran State had to collect the three million lempiras paid to the counterpart, which is why it attached its bank accounts. It indicated that, of that sum, it could recover only 2,042,378.17 lempiras that Mr. and Mrs. Zablah had in the Bank of America and the Banco El Ahorro Hondureño; as a result, it had to attach other property of Mr. and Mrs. Zablah, which was valued and put up for auction in keeping with the pertinent provisions of Honduran law, and so there was no flagrant dispossession of the petitioners' assets.[FN19]

[FN19] See Official Note N° 081-DDHN from the Ministry of Foreign Affairs of the Republic of Honduras to Executive Secretary Jorge Taiana, dated July 9, 1999, and Official Note N° 215-DDHN, Note from the Ministry of Foreign Affairs of the Republic of Honduras to Executive Secretary Jorge Taiana, dated August 30, 2000, pp. 10 and 11.

25. The State argued that the action was filed against said Sociedad Inmobiliaria and against three natural persons, one of them being Claudia Rodríguez de Zablah, and that these three persons acted in their personal capacity in the sales contract entered into with the State. It argued that the petitioners were "sellers" in this contract, and the role of the company was as an intermediary, or as their representative,[FN20] and that the execution of the judgment was with respect to the assets of the petitioners and all the other respondents, as they were the owners of the real property that was the subject of the sale.[FN21]

[FN20] See Official Note N° 081-DDHN from the Ministry of Foreign Affairs of the Republic of Honduras to Executive Secretary Jorge Taiana, dated July 9, 1999.

[FN21] See Official Note N° 215-DDHN, Note from the Ministry of Foreign Affairs of the Republic of Honduras to Executive Secretary Jorge Taiana, dated August 30, 2000, p. 10.

26. With respect to the petitioners' arguments that the notifications for the experts who valued the properties of Mr. and Mrs. Zablah were not made correctly, the State argued that even though they had been incorrect (which it did not accept), they are validated under Honduran legislation due to the fact that the parties had notice, which happened in this case when the experts issued their report.[FN22]

[FN22] See Official Note N° 215-DDHN, Note from the Ministry of Foreign Affairs of the Republic of Honduras to Executive Secretary Jorge Taiana, dated August 30, 2000, p. 11.

27. In addition, the Honduran State asked that the complaint be declared inadmissible for failure to exhaust domestic remedies, for motives imputable to the petitioners; they could have pursued a judicial claim against the government of Honduras, seeking damages for what happened. The State argued that it was possible to file such an action, as the petitioners in fact did, as they could have filed an ordinary action for damages (Demanda Ordinaria de Daños y Perjuicios) in the First Court of Letters for Civil Matters of the department of Francisco Morazán, which was admitted. It argued that they themselves abandoned the action, allowing the time period for bringing such an action to lapse.[FN23]

[FN23] Under Honduran legislation, a procedural opportunity lapses when no initiative is taken to make use of it. In the case of the first instance, the statute of limitations on the litigation runs three years after the final notice to the parties, if no party has sought to avail itself of it.

28. With respect to the motion for reinstatement, the State indicated that the reinstatement remedy, in Honduran legislation, can only be pursued in response to decisions on procedural matters and interlocutory judgments handed down in the first instance, and those handed down in ruling on the appeal and cassation remedies; in other words, the petitioners did not have to request reinstatement of the ruling handed down in the motion for review, accordingly the Supreme Court of Justice declared it inadmissible. It argued that the petitioners pursued this remedy knowing that it was inadmissible, for the purpose of setting in motion the time period for presenting the petition to the IACHR, and expressed that an inadmissible or illegal action cannot be taken into account for authorizing or updating a time period requirement for the admissibility of the petition.[FN24] In addition, it indicated that the motion was ruled on in 1999, the petition having been presented in May 1997; thus the petitioners continued to exhaust domestic remedies even after having presented their petition to the IACHR.[FN25]

[FN24] See Official Note N° 081-DDHN from the Ministry of Foreign Affairs of the Republic of Honduras to Executive Secretary Jorge Taiana, dated July 9, 1999.

[FN25] See Official Note N° 215-DDHN, Note from the Ministry of Foreign Affairs of the Republic of Honduras to Executive Secretary Jorge Taiana, dated August 30, 2000, p. 7.

29. The State further alleged that the last valid domestic remedy pursued by the petitioners was the motion for review before the Supreme Court of Justice, against which no further remedy is afforded under Honduran legislation, and that it can only be filed, among other grounds, when the judgment is won unjustly by virtue of subornation or fraudulent machination. It indicated that in the motion the petitioners did not present a judgment declaring the existence of such fraudulent machination, accordingly the motion was denied. It argued that even in the event that

this remedy were considered the one that exhausted the domestic jurisdiction, the petition had been submitted in untimely fashion, as the ruling was handed down on November 5, 1996, and notice of it was given on November 27, 1996, thus the petition had to have been submitted from December 1996 to May 1997.[FN26]

[FN26] This date corresponds to the opening of the case, and not to the filing of the complaint with the IACHR, as the State indicated.

IV. ANALYSIS OF ADMISSIBILITY

30. The Commission now analyzes the admissibility requirements for a petition established in the American Convention, beginning with the exhaustion of domestic remedies, the main point in controversy in the instant petition.

Exhaustion of domestic remedies

31. First, the Commission observes that the parties presented different arguments for the purposes of counting the six-month period established in Article 46(1)(b), in case the Commission determines that domestic remedies have been exhausted. Nonetheless, the Commission observes that the debate on that point is moot, for the State, beginning with the brief in answer to the complaint, alleged failure to exhaust domestic remedies, and indicated that the petitioners “can still exercise judicial action against the Government of Honduras,”[FN27] claiming damages for the violations alleged.

[FN27] Official Note N° 081-DDHN from the Ministry of Foreign Affairs of the Republic of Honduras to Executive Secretary Jorge Taiana, dated July 9, 1999. In this respect, the State indicated that, in keeping with Article 2292 of the Civil Code of the Republic of Honduras, which stipulates that “personal actions for which no special term is given shall prescribe after 10 years”; the action has yet to prescribe, for the ten years have yet to elapse, thus the petitioners could still bring a new action.

32. The Inter-American Court has established previously that “the State claiming non-exhaustion has an obligation to prove that domestic remedies remain to be exhausted and that they are effective,”[FN28] and that “if a State which alleges non-exhaustion proves the existence of specific domestic remedies that should have been utilized, the opposing party has the burden of showing that those remedies were exhausted or that the case comes within the exceptions of Article 46(2).”[FN29]

[FN28] Inter-American Court of Human Rights, Case of Velásquez Rodríguez, Preliminary Objections, Judgment of June 26, 1987, para. 88.

[FN29] Inter-American Court of Human Rights, Case of Velásquez Rodríguez, Judgment of July 29, 1988, para. 60.

33. In the present case, the State indicated that the action for damages was still available to the petitioners. The State added that they had brought an ordinary action for damages before the First Court of Letters for Civil Matters (department of Francisco Morazán) for the purpose of making reparation for the damages caused by the attachment and sale of their property for a sum less than their real value, yet ceased to pursue the trial, abandoning said judicial opportunity. The State indicated that on failing to give impetus to the procedure, the petitioners allowed the statute of limitations to run, as provided for by Article 147 of the Code of Civil Procedure, which provides that the opportunity to bring such an action shall be considered abandoned, and it shall lapse as a matter of law, if no initiative is taken to institute a proceeding within three years, when the dispute is before the courts of first instance.

34. The petitioners argued that the remedy was ineffective and that said action had no chance whatsoever of success due to the existence of a final judgment favorable to the State. In addition, they argued that such actions generally take five to ten years to run their course, and that at that time, the Honduran judicial system lacked even a bare minimum of independence in its decisions.

35. The Commission considers that while the petitioners argue that the remedy would be inadmissible due to the existence of a final judgment in the case, this contradicts the fact that they actually pursued an action, and it was admitted. In addition, their fear of obtaining an unfavorable judgment by the judiciary is not sufficient reason to constitute an exception to the prior exhaustion requirement in this case.

36. As for the lack of independence of the Judiciary and the partiality of the judges alleged by petitioners, the Commission recalls that it cannot be presumed *prima facie*, for what is decisive is not the petitioners' subjective fear with respect to the impartiality that should be the characteristic of the court that takes up the trial, but the fact that in the circumstances it can be argued that their fears are objectively justified. In this sense, the European Court has said: "In principle, the personal impartiality of the members of a 'tribunal' must be presumed until there is proof to the contrary." [FN30] The petitioners have not provided sufficient proof in this regard.

[FN30] European Court of Human Rights, *Albert and Le Compte v. Belgium*, February 10, 1983, Series A N° 58, Applications N° 7299/75 and 7496/76 (1983) 5 EHRR 533, and 32.

37. Therefore, the Commission considers that said remedy was not exhausted by the petitioners, for motives not imputable to the State, and that they did not present evidence or information that would enable the Commission to apply the exceptions to the exhaustion of domestic remedies established at Article 46(2)(a) and (b).

38. For the reasons set forth above, and considering that the petition under study did not meet the requirement of exhaustion of domestic remedies established in Article 46(1)(a) of the American Convention, the Commission concludes that the petition is inadmissible. In view of the foregoing, the IACHR refrains from examining the other admissibility requirements set forth in the Convention, as the matter has been found not to be ripe for consideration by the Commission.

V. CONCLUSIONS

39. The Commission has established that the present petition does not meet the requirement set forth in Article 46(1)(a) and (b) of the American Convention. Accordingly, the Commission concludes that the petition is inadmissible, in keeping with Article 47(a) of the American Convention.

40. Based on the arguments of fact and law set forth above,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present petition inadmissible.
2. To notify the parties 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., 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.