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File Number(s):	Report No. 21/02; Petition 12.109
Session:	Hundred and Fourteenth Regular Session (25 February – 15 March 2002)
Title/Style of Cause:	Bessy Margarita Martinez Alvarez and Blanca Rosa Sanchez Rodriguez v. Honduras
Doc. Type:	Decision
Decided by:	President: Juan Mendez; First Vice-President: Marta Altolaguirre; Second Vice-President: Jose Zalaquett; Commissioners: Robert K. Goldman, Julio Prado Vallejo, Clare K. Roberts.
Dated:	27 February 2002
Citation:	Martinez Alvarez v. Honduras, Petition 12.109, Inter-Am. C.H.R., Report No. 21/02, OEA/Ser.L/V/II.117, doc. 1 rev. 1 (2002)
Represented by:	APPLICANT: Gonzalo Rafael Chavez
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I. SUMMARY

1. By communication submitted to the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) on September 3, 1998, by Mr. Gonzalo Rafael Chávez (hereinafter the “petitioner”), in representation of María Cristina Alvarez Lanza and Ramona Martínez, it was denounced that the Republic of Honduras (hereinafter “Honduras,” “the State,” or “the Honduran State”) violated Articles 4 (right to life) and 8 (right to a fair trial) of the American Convention on Human Rights (hereinafter “the Convention”) in conjunction with the generic obligation of the State to respect and ensure the aforementioned rights, established in Article 1(1) thereof, all to the detriment of Bessy Margarita Martínez Alvarez and Blanca Rosa Sánchez Rodríguez.

2. The Honduran State alleged that the petition was manifestly groundless, and that it was obviously out of order; accordingly, it asked the Commission to declare it inadmissible under Article 47(b) and (c) of the Convention.

3. The IACHR, on February .27, 2002, decided that the petition was inadmissible pursuant to Article 47(b) and (c) of the American Convention. The Commission also decided to give notice of this determination to the parties, and to publish it and include it in its Annual Report to the OAS General Assembly.

II. PROCESSING BEFORE THE COMMISSION

4. The petition was submitted to the IACHR on September 3, 1998. On January 25, 1999, the petitioner forwarded the certifications of the records in the proceedings in this matter. On March 1, 1999, the Commission decided to open petition 12.109, and forwarded the pertinent parts of the complaint to the Honduran State, asking that it answer within 90 days. The State responded on June 1, 1999 (official note dated May 21, 1999). From June 1999 to June 2001, both parties submitted more information to the IACHR, and their respective comments and observations.

III. POSITIONS OF THE PARTIES

A. Petitioner's position

5. The petitioner indicated in his initial communication[FN1] that on December 12, 1988, the residents of the Divanna neighborhood of Comayaguela, municipality of the Central District, sent a note to the manager of the National Water and Sewerage Service (SANAA: Servicio Nacional de Acueductos y Alcantarillado), a decentralized state institution, in which they described the poor conditions of one of the walls that is the property of the SANAA in the "Callejón de los filtros del SANAA" (Alley of the SANAA filtration plants), requesting that they be repaired to prevent the loss of human lives and material losses.[FN2]

[FN1] September 3, 1998.

[FN2] That letter appears in the record before the Commission.

6. On October 14, 1991, at approximately 2:55 p.m., the wall collapsed, killing Bessy Margarita Martínez Alvarez, who was 20 weeks pregnant, and Blanca Rosa Sánchez Rodríguez, who were walking through the alley. The two-year-old daughter of Ms. Martínez Alvarez, Mayra Alejandra Izaguirre Martínez, suffered a fractured arm.[FN3]

[FN3] The petitioner supported all this information with a copy of the respective medical certificates.

7. After the accident, the mother and daughter of Bessy Margarita Martínez Alvarez, along with the mother of Blanca Rosa Sánchez Rodríguez, appointed Enrique Flores Lanza as their legal representative to claim compensation from SANAA. On December 18, 1991,[FN4] the legal representative submitted a brief to the water company in which he requested "Payment of Compensation because of Death." That brief was sent to the office of legal counsel of SANAA, in response to which it did not issue any resolution, according to the petitioner. On January 8, 1992, the same legal representative sent a new brief to SANAA requesting, on behalf of his clients, "Amount of Assistance because of Death" in the amount of 16,800.00 lempiras, alleging that:

[FN4] The original petition submitted by the petitioner was accompanied by the brief submitted to the SANAA, on May 4, 1995, by which Ms. Alvarez Lanza and Ms. Rodríguez requested, as compensation for death, endangering another's life, and damages, payment of the sum of 11,430,747.89 lempiras.

[B]y virtue of the initiatives vis-a-vis the SANAA for payment of compensation for wrongful death of the assignors of my clients, we were told by the SANAA counsel of the decision by the board of directors, which, while not acknowledging SANAA's liability for the deaths described, indicated that the company was willing to pay their beneficiaries a sum of money as assistance because of death, for humanitarian reasons....

8. The petitioner indicates that in response to that brief, SANAA did not issue any resolution, although the company did make payment of 16,800.00 lempiras, which, according to the petitioner, corresponded to the request for assistance because of death. Nonetheless, according to petitioner, the voucher for each check cashed by his clients bears the legend "to make payment of compensation for the death of persons who died in the collapse of the SANAA wall..." and a similar legend appears in the memorandum that ordered that the checks be issued. The petitioner emphasized, however, that the brief that led to the issuance of the checks was the one in which the amount of assistance because of death was requested, and not that in which compensation for death was requested, meaning, therefore, that the latter was still pending payment.

9. The petitioner indicated that he had exhausted administrative remedies before the SANAA, as the company refused to pay compensation for the deaths of the persons who lost their lives when the wall collapsed.[FN5] He also reported that his clients recurred to the courts, filing a contentious-administrative claim, which was resolved in their favor in the first instance; the company was ordered to pay compensation for the death of Bessy Margarita Martínez Alvarez and Blanca Rosa Sánchez Rodríguez. The SANAA appealed that decision, and, on appeal, the Court of Appeals for Contentious-Administrative Matters for the City of Tegucigalpa ruled favorably, overturning the judgment by the court below, and releasing the company of any liability. In response to that decision, a motion for cassation was filed before the Supreme Court of Justice, which found the motion admissible, but ruled against the complainant's claim for compensation.

[FN5] The SANAA resolutions appear in the record before the Commission.

10. The petitioner indicated that the way in which the contentious-administrative and regular jurisdictions of Honduras proceeded constituted a violation of Article 8(1) of the Convention. According to the complainant, the Court of Appeals based its decision, on overturning the judgment of the court of first instance, on the objection to payment filed late by SANAA before that judge. In the view of the petitioner, that objection had to have been raised in respondent's first brief, i.e. in the same brief in which it set forth its objection on the basis of complainant's lack of standing. As the respondent raised the objection to payment later, the judge of first

instance acted lawfully in finding it inadmissible, not even issuing an opinion in this respect. Nonetheless, the appellate court took into account respondent's objection to payment, and, based on it, overturned the judgment appealed, exonerating SANAA of liability, holding that it had already made the compensatory payment, and that, accordingly, its reparatory obligation had been extinguished by that act. For the petitioner, the appeals court lacked jurisdiction to hear an objection, the objection to payment; it could have only been considered, had it been raised in a timely fashion, by the judge of first instance. The petitioner indicates that the Supreme Court of Justice, on not overturning the appellate ruling, violated Article 8 of the Convention, denying justice, and that its failure to pay compensation to the complainants for the arbitrary deaths of their family members also constituted a violation of Article 4 of the Convention.

B. The State's position

11. The State alleged[FN6] that the complainant had exhausted all remedies afforded by Honduran legislation. It also indicated that on December 18, 1991, a brief was submitted to SANAA entitled "Payment Sought as Compensation for Death" ("Se Solicita Pago de Indemnización por Causa de Muerte"), which was not mentioned by the complainant in the brief filed before the contentious-administrative jurisdiction on September 5, 1995. The State also referred to the brief submitted to SANAA by the legal representative of the complainants entitled "Request for an Amount to be Set for Assistance because of Death" asking for the sum of 15,000.00 lempiras for assistance because of death, in a broad reading of clause 58 of the collective bargaining agreement between the company and its workers, and 1,800.00 lempiras for funeral costs, for a total of 16,800.00 lempiras.

[FN6] In its communication dated May 21, 1999 (received at the IACHR on June 1, 1999).

12. The State also reported that on January 20, 1992, by memorandum AL-018-92, the company ordered the payment to the mothers of 16,800.00 lempiras as "payment of compensation for the death of persons who died in the collapse of the SANAA wall in the Divanna neighborhood." That order was made effective through checks numbered 032862 and 032863, dated January 24, 1992, and cashed to the satisfaction of each of the complainants, as shown by their signatures on the respective payment vouchers.[FN7]

[FN7] The two payment vouchers were submitted to the IACHR by the petitioner in his initial communication. Each document includes the respective complainant's signature, and the legend "For payment of compensation for the death of persons who died in the collapse of the SANAA wall in the DIVANNA neighborhood of Comayagua, MCD, according to memo AL-018-92."

13. The State alleged in the contentious-administrative proceeding instituted by the complainants that they were the same persons who had made a claim to SANAA and received and agreed on the checks for 16,800.00 lempiras, each. Consequently, when answering the

complaint filed against it, the State objected that payment had already been made, as provided for in the Honduran Civil Code.[FN8]

[FN8] Article 1421 of the Honduran Civil Code indicates that obligations are extinguished, *inter alia*, by payment or performance.

14. In addition, the State notes that the ruling of the court of first instance, recognized the right of complainants María Cristina Alvarez and Ramona Martínez to receive compensation from SANAA for their daughters' deaths. That same judgment ordered the company to pay the damages suffered in the amount determined through expert opinions, to execute the judgment.

15. The State added that, as a result of the appeal of the judgment of first instance filed by SANAA, the Court of Appeals, in its judgment of February 7, 1997, in one of its conclusions of law, making reference to Article 1421 of the Civil Code, which had been invoked by the State before the judge of first instance and before the appellate court, indicated that "obligations are extinguished by payment or performance." Therefore, the Court of Appeals ruled favorably on the appeal, thereby overturning the judgment of the court below, and absolving SANAA of all liability.

16. The judgment on appeal was challenged in a motion for cassation filed by the complainants. The Supreme Court was of the view that the violation of law invoked by the appellant had not been violated, and, accordingly, ruled declaring "inadmissible the motion for cassation on the merits," ordering that the matter be sent back to the court from which it came.[FN9]

[FN9] Judgment of May 14, 1998.

17. Finally, the State, in its initial communication and in later communications to the IACHR, denied it had violated Article 4 of the Convention, as none of the entities denounced in the petition, *i.e.* SANAA, the Court of Appeals for Contentious-Administrative Matters, or the Supreme Court of Justice, had arbitrarily deprived Bessy Margarita Martínez Alvarez and Blanca Rosa Sánchez Rodríguez of their lives. It also indicated that, as the compensation requested had been paid, any obligation the State might have had with respect to those deaths had been extinguished. Moreover, the Honduran State denied that it had violated Article 8 of the Convention, as the complainant had enjoyed the full guarantees established in the Constitution of the Republic of Honduras and its secondary laws applicable to the case, and specifically those established at Articles 1 and 8(2)(h) of the Convention.

IV. ANALYSIS

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

18. The IACHR is competent *ratione temporis*, as the facts alleged in the petition took place when the obligation to respect and ensure the rights established in the American Convention had already entered into force for the Honduran State.[FN10]

[FN10] Honduras ratified the American Convention on September 8, 1977.

19. The Commission is competent *ratione materiae* because the petition alleges violations of human rights protected by the American Convention.

20. The Commission is competent *ratione loci* to take cognizance of this petition as it alleges violations of rights protected in the American Convention in the territory of a State party to that Convention.

21. The Commission is competent *ratione personae* to take cognizance of this petition, as the conditions set forth in Articles 44 and 1(2) of the Convention are met.

B. Other Admissibility Requirements of the Petition

1. Exhaustion of domestic remedies

22. Article 46(1)(a) of the American Convention establishes that in order for a petition to be admitted, it is necessary “that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.” The State, in its communication dated May 21, 1999, indicated that “the complainant, in its contentious-administrative action, has exhausted all the remedies provided by Honduran law, there being no motion for review (*recurso de revisión*) in this area....” Accordingly, the Commission considers that the requirement set forth in Article 46(1)(a) of the Convention has been met, with the express recognition of the Honduran State.

2. Time period for submission

23. Article 46(1)(b) of the American Convention indicates that in order for a petition or communication to be admitted by the Commission, it must be submitted within six months of the date on which the party whose rights are alleged to have been violated has been given notice of the final decision. In the instant case, the final judgment was handed down by the Supreme Court of Justice on May 14, 1998. The petitioner then submitted the complaint to the Commission on August 17, 1998, i.e. three months after the Supreme Court ruling. Accordingly, the IACHR considers that the requirement set forth at Article 46(1)(b) of the Convention has been met.

3. Duplication of procedures and *res judicata*

24. The record of the petition does not contain any information that would lead to a determination that this matter is pending settlement before another international organization or

that it has previously been decided 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.

4. Characterization of the facts alleged

25. Article 47 of the Convention indicates that:

The Commission shall consider inadmissible any petition or communication ... if:

...

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

c. the statements of the petitioner or of the state indicate that the petition or communication is manifestly groundless or obviously out of order; or

A. With respect to Article 8 of the Convention

26. In the present matter, the petitioner alleged that the Honduran State violated his clients' right to a fair trial due to the fact that the appellate court heard and ruled favorably on the peremptory objection of payment (Article 1421 of the Civil Code), raised by SANAA after the time for doing so had expired, according to complainant, on not having invoked it in its first brief, in which it alleged the preliminary defense of complainant's lack of standing, but only in the brief in which it later answered the complaint.

27. The State, for its part, backed the decision of the Supreme Court of Justice, which, in its final judgment, indicated that it was:

evident that the court [Court of Appeals] has not unlawfully applied Article 1421 of the Civil Code, considering that from the background seen and examined it appears that the complainant, in its brief answering the complaint ... raised the objection of payment, since the underlying claim that the obligation to pay on the amount sought had been extinguished....[FN11]

[FN11] Judgment of May 14, 1998.

28. The Commission notes that the debate in this matter is focused on a procedural issue referring to the timeliness with which the objection of payment was raised. The Commission notes that this matter has characteristics similar to another in which this same organ noted: "What the petitioner has brought before the IACHR is his disagreement with the ... courts' interpretation of certain domestic procedural rules." [FN12] On that occasion, the Commission noted that "national courts are responsible for interpreting national procedural laws, and the IACHR is not competent to determine the correct interpretation of local provisions unless the interpretation in itself constitutes a violation of the Convention." [FN13] As in the case cited, the

Commission considers that in this matter, the interpretation rendered by the Honduran judicial authorities of the procedural provisions in question does not constitute a violation of the American Convention.

[FN12] Report No. 120/01, Petition 0122/01 Atanasio Franco Cano (Paraguay), October 10, 2001, para. 4, in <http://www.cidh.org/annualrep/2001sp/ParaguayPO122.01.htm>.

[FN13] Id.

29. Similarly, the Commission considers that in the domestic proceeding, each party enjoyed extensive and equal opportunities to argue its position within a process that was in keeping with the guarantees set forth in Article 8(1) and 8(2), as pertinent, of the Convention. Accordingly, in keeping with Article 47(d) of the American Convention, the IACHR concludes that the facts alleged by the petitioner with respect to a violation of Article 8 of the Convention does not tend to establish violations of the right to a fair trial protected by that provision.

B. In relation to Article 4 of the Convention

30. The petitioner also alleged violation of Article 4 of the American Convention for the death of the persons who lost their lives when the SANAA wall collapsed, and for failure to compensate for those losses.

31. The State alleged before the Honduran courts that the only fact of those adduced by the complainant that it accepted was that on October 14, 1991, there was an accident in the Divanna neighborhood of Comayaguela, in the place known as the alley of the SANAA filtration plants, where the following persons died: Bessy Margarita Martínez Alvarez and Blanca Rosa Sánchez Rodríguez, when a brick wall collapsed that was the property of the Servicio Autónomo Nacional de Acueductos y Alcantarillado (SANAA), due to force majeure, due to heavy rains in the capital at that time, causing the death of the aforementioned persons.... In that regard, that circumstance is accepted, since in no way was an effort made to endanger the life of the persons who were passing by that place.[FN14]

[FN14] Brief in answer to the contentious-administrative complaint, filed by SANAA before the judge of first instance for contentious-administrative matters.

32. In addition, before the Honduran courts, and before the Commission, the State acknowledged having paid the sum of 16,800.00 lempiras as compensation for the death of the persons who perished when the wall collapsed. The Supreme Court of Justice of Honduras, in a final judgment, indicated:

that from the review of the ruling challenged it is evident that the court [Court of Appeals] has not unlawfully applied Article 1421 of the Civil Code, considering that from the background seen and examined it appears that the complainant, in its brief answering the complaint ... raised

the objection of payment, since the underlying claim that the obligation to pay on the amount sought had been extinguished, which it showed with evidence....[FN15]

[FN15] Judgment of the Supreme Court of Honduras of May 14, 1998.

33. The international protection of human rights, as indicated in the preamble of the American Convention, “reinforc[es] or complement[s] the protection provided by the domestic law of the American states.” The inter-American system for the protection of human rights has a domestic ambit and an international ambit. If a specific case is not resolved domestically, the Convention provides that the second one can be set in motion, with the principal organs being this Commission and the Inter-American Court of Human Rights.

34. In addition, the Commission is mindful that both domestically and internationally, there are various ways of making reparation for human rights violations. The appropriateness of those many different forms of reparation depends on the special circumstances in which the alleged violations take place, and, especially in the domestic sphere, of the type of jurisdiction set in motion to attain the reparation.

35. In the instant case, the complainants set in motion the contentious-administrative jurisdiction, through which they asked the State to pay compensation for a non-criminal act liability for which was imputed to it.

36. In addition, the petitioners, presented their claims at every level of the domestic legal system, and the Commission is of the opinion that the judicial guarantees, set forth in article 8 of the Convention, had not been violated. These special circumstances lead the IACHR to conclude that, in the matter under examination, the claim and its dispute were resolved at the domestic level. Accordingly, in conformity with article 47(c) of the American Convention, the Commission finds the alleged violation of the right protected by article 4 of the Convention, to be groundless.

V. CONCLUSION

37. The Commission has established that the petition falls under the provisions at Article 47(b) and (c) of the American Convention, and therefore concludes that it is inadmissible.

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

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the petition in this matter inadmissible.
2. To give notice of this decision to the petitioner and to the State.

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; Robert K. Goldman, Julio Prado Vallejo, and Clare K. Roberts, Commission members.