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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 82/03; Petition 12.330
Session: Hundred and Eighteenth Regular Session (7 – 24 October 2003)
Title/Style of Cause: Marcelino Gomes Paredes and Cristian Ariel Nunez v. Paraguay
Doc. Type: Decision
Decided by: President: Jose Zalaquett;
First Vice-President: Clare K. Roberts;
Second Vice-President: Susana Villaran;
Commissioners: Robert K. Goldman, Julio Prado Vallejo.
Dated: 22 October 2003
Citation: Gomes Paredes v. Paraguay, Petition 12.330, Inter-Am. C.H.R., Report No. 82/03, OEA/Ser.L/V/II.118, doc. 5 rev. 2 (2003)
Represented by: APPLICANTS: Centro por la Justicia y el Derecho Internacional and Servicio Paz y Justicia-Paraguay
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I. SUMMARY

1. On October 17, 2000, Deogracia Lugo de Nuñez and Zulma Paredes de Gomez and the organizations Centro por la Justicia y el Derecho Internacional (Center for Justice and International Law, CEJIL) and Servicio Paz y Justicia-Paraguay (Peace and Justice Service–Paraguay (SERPAJ-PY) presented a petition to the Inter-American Commission on Human Rights (hereafter “the Commission” or “the IACHR”) against the Republic of Paraguay (hereafter “Paraguay” or “the State”).
2. The petitioners charge that the boys Marcelino Gomes Paredes and Cristian Ariel Nuñez, 14 years of age, disappeared while performing compulsory military service in the Armed Forces of Paraguay.
3. The State argues failure to exhaust the remedies available within domestic jurisdiction.
4. After analyzing the petition, and in accordance with Articles 46 and 47 of the American Convention, as well as Articles 30, 37 and concordant Articles of its Rules of Procedure, the Commission has decided to declare the petition admissible, in relation to alleged violations of Articles 7, 5, 4, 19, 8, 25 and 1(1) of the American Convention, and in relation to Articles I, III, IV and concordant Articles of the Inter-American Convention on the Forced Disappearance of Persons.

II. PROCEEDINGS BEFORE THE COMMISSION

5. On October 25, 2000, the Commission transmitted the relevant portions of the complaint to the Paraguayan State and, in accordance with its rules of procedure at the time, requested the State to respond within 90 days. On November 13, 2000, the State indicated that it wished to begin friendly settlement proceedings. At that time, efforts were launched to reach a friendly settlement, and these included hearings and working meetings before the IACHR, meetings between the parties in Paraguay, and submission of additional information to the IACHR on various occasions. On May 13, 2003, the petitioners reported to the IACHR their decision to terminate the friendly settlement proceedings. On May 20, 2003, the Commission transmitted that communication to the State, giving it two months to present its response to the petition. On July 25, 2003, the

State presented its response.

III. POSITION OF THE PARTIES

A. Position of the petitioners

6. The petitioners indicate that the Compulsory Military Service (SMO) has been in force in Paraguay since 1945, and that there are numerous records of conscripts who have suffered accidents or presumed homicide during their compulsory military service. The petitioners add that between 1989 and 2000 “101 conscripts were recorded as having died during SMO from various causes.... During that same time, complaints were presented relating to 57 cases of persons disabled because of accidents or punishment during SMO”. They indicate that several cases have been confirmed where SMO conscripts were used as forced labor for the benefit of private businesses belonging to officers of the military and police forces.

7. The petitioners argue that, despite the clear legal provisions prohibiting the recruitment of children under the age of 18, and repeated complaints on this score, “the military and police forces have made it a systematic, constant and frequent practice to recruit minors between the ages of 12 and 17, and to date no steps have been taken to curb this practice.”

8. The petitioners report that in August 1997, Marcelino Gomes Paredes and Cristian Ariel Nuñez, who were then 14 years of age, presented themselves voluntarily at the recruitment center in the city of Caguazu to fulfill their compulsory military service in the Armed Forces of Paraguay. Despite the fact that Paraguayan legislation required legal authorization from the parents, because of their age, the Armed Forces accepted these boys without fulfilling that requirement, and placed them both in military service as conscripts. Both boys were assigned to military service at Military Post 1 “General Patricio Colman”, a part of the Fifth Infantry Division, located in Lagerenza, Department of Alto Paraguay.

9. The petitioners report that on February 1998 the families of the two boys were notified that they were missing. The Armed Forces provided various versions to relatives, saying for example that Marcelino Gomes Paredes had gone on leave for eight days and had not returned, and the Cristian Ariel Nuñez had robbed a superior officer and had then escaped. The Armed Forces then changed their version, and maintained that both boys had become lost when they

went into the bush in search of a stray cow. Finally, the version was that the two boys had deserted, and that their whereabouts was unknown.

10. The petitioners report that on June 14, 2000, they brought a petition for habeas corpus before the Supreme Court of Justice, asking that the Commander-in-Chief of the Armed Forces of Paraguay be ordered to produce the boys Marcelino Gomes Paredes and Cristian Ariel Nuñez. On June 19, 2000, the Armed Forces submitted a brief to the court, declaring that the boys Marcelino Gomes Paredes and Cristian Ariel Nuñez had disappeared from the military detachment, and that the search for them had been fruitless, for which reason they were presumed to have deserted. On July 12, 2000, the Criminal Chamber of the Supreme Court of Justice dismissed the appeal for habeas corpus.

11. The petitioners note that, within domestic jurisdiction, the Office of the Attorney General opened an investigation, *ex officio*, before the Criminal Court of Filadelfia, Department of Boqueron, to determine responsibilities with respect to the events, but that investigation has come to “a standstill”. They claim to have unofficial knowledge to the effect that the Armed Forces have declared Marcelino Gomes Paredes and Cristian Ariel Nuñez to be deserters, for which reason the Armed Forces consider themselves “relieved of any responsibility or interest in the case.”

12. The petitioners argue that, with respect to the alleged facts, the Paraguayan State has violated Articles 4, 5, 7, 19 and 25 of the American Convention on Human Rights, taken in concordance with Article 1(1) of the treaty. They also argue that the State has violated the Inter-American Convention on the Forced Disappearance of Persons.

B. Position of the State

13. The Paraguayan State maintains that its agents, judicial authorities, investigators and members of the Armed Forces have cooperated throughout the friendly settlement proceedings before the IACHR, and worked with the participation of the alleged victims’ relatives to determine their whereabouts, but that unfortunately those efforts and procedures have been fruitless to date.

14. An internal criminal investigation was launched, under the title “Blas Vera: Investigation and Confirmation of the Disappearance of the Conscripts Cristian Ariel Nuñez and Marcelino Gomes Paredes in Lagerenza”. That investigation was initiated in 1998, “under the old criminal procedures system”; on December 1, 2000, the presiding judge issued an interlocutory decree rejecting a motion for dismissal brought by the accused; in another ruling of April 3, 2002, the judge rejected another motion submitted by the accused to terminate summary proceedings. According to the State, “the foregoing shows that the State fulfilled its duty to investigate”; in July 2003 the case was “in the plenary stage of first instance”, and that a Court of Appeals was expected to issue a decision on the plea for dismissal of the criminal charges against the defendant.

15. The State adds that, in light of the foregoing, the remedies available within domestic jurisdiction have not been exhausted, and that:

Domestic jurisdictional bodies must pronounce themselves on the complaints, and if those decisions are not satisfactory to the victims' relatives, they are by law guaranteed the right to appeal those decisions to the Supreme Court of Justice. Once those remedies have been exhausted, the relatives are entitled to the subsidiary route of bringing a complaint before the organs of the inter-American system, by virtue of the fact that the State has guaranteed their access to those bodies of international protection, through its ratification of the American Convention and other human rights instruments, and its acceptance of the jurisdiction of the Inter-American Court of Human Rights.

16. The State argues that there now exist mechanisms to exert adequate control over compulsory military service, reflecting "the cooperation and willingness of the Armed Forces to provide internal supervisory bodies with access to information and to military facilities so that they can observe the human rights situation in those places, something that is without precedent in Paraguay and in the hemisphere".

17. The State notes that nongovernmental organizations, including international agencies, are working actively with the interinstitutional commissions of the State to visit military outposts, and that they can testify both to the progress and the difficulties encountered in this process.

IV. CONSIDERATIONS OF ADMISSIBILITY

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

18. The petitioners are entitled, under Article 44 of the American Convention, Article XIII of the American Convention on the Forced Disappearance of Persons and Article 23 of the IACHR Rules of Procedure, to lodge complaints with the IACHR with respect to violations of the rights protected in those treaties. As regards the State, Paraguay is a party to both treaties and is therefore responsible internationally for violations of those instruments. 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. The Commission therefore has competence *ratione personae* to examine the complaint

19. The Commission has competence *ratione materiae*, since the petition describes violations of human rights protected by the American Convention and the American Convention on the Forced Disappearance of Persons.

20. The Commission has competence *ratione temporis*, since the obligation of respecting and ensuring the rights protected by the American Convention and the American Convention on the Forced Disappearance of Persons was already in force for the State on the date on which the incidents described in the petition allegedly occurred.

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

B. Admissibility requirements

a. Exhaustion of domestic remedies

22. The Commission notes that on June 14, 2000, the petitioners bought an appeal for habeas corpus before the Supreme Court of Justice of Paraguay, and that this was rejected by the Criminal Chamber of the Supreme Court of Justice on July 12, 2000. The Commission considers that the habeas corpus action and decision provide sufficient grounds to consider that all suitable and effective domestic remedies for resolving the alleged violation of human rights, i.e. the disappearance of Marcelino Gomes Paredes and Cristian Ariel Nuñez, have been exhausted.

23. The Inter-American Court of Human Rights has held, with respect to the exhaustion of domestic remedies in cases of forced disappearance, that, "in keeping with the object and purpose of the Convention and in accordance with an interpretation of Article 46(1)(a) of the Convention, the proper remedy in the case of the forced disappearance of persons would ordinarily be habeas corpus, since those cases require urgent action by the authorities. Consequently, habeas corpus would be the normal means of finding a person presumably detained by the authorities, of ascertaining whether he is legally detained and, given the case, of obtaining his liberty ".[FN1] Consequently, the filing of a petition for habeas corpus, in cases of persons detained and subsequently disappeared, where the decision thereon is negative because the victims have not been located, is sufficient grounds to consider that domestic remedies have been exhausted.[FN2]

[FN1] I-A Court, Velasquez Rodriguez case, judgment of July 29, 1999, para. 65; and Caballero Delgado and Santana case, Preliminary Objections, judgment of January 21, 1994, para. 64.

[FN2] Caballero Delgado and Santana case, Preliminary Objections, judgment of January 21, 1994, para. 67.

24. With respect to the pending criminal proceedings relating to the alleged disappearance of the presumed victims, on the basis of which the State maintains that domestic remedies have not been exhausted, the Commission reiterates that, in a case of forced disappearance, the filing of a habeas corpus petition and the ruling thereon is sufficient to consider that domestic remedies have been exhausted.

25. The Commission concludes that, with the judgment issued by the Criminal Chamber of the Supreme Court of Justice on July 2, 2000, dismissing the petition for habeas corpus brought on behalf of the boys Marcelino Gomes Paredes and Cristian Ariel Nuñez, the remedies available within domestic jurisdiction were exhausted.

b. Timeliness of the Petition

26. The Commission notes that the motion for habeas corpus was decided by the Criminal Chamber of the Supreme Court of Justice on July 12, 2000, and that the petition was presented to

the IACHR on October 17, 2000, within the six-month period established in Article 46(1)(b) of the American Convention.

c. Duplication of Procedures

27. 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

28. The Commission believes that the petitioners' claims describe incidents that, if true, could tend to establish a violation of the rights to personal liberty, to humane treatment, to life, to special protection for children, to a fair trial, and to judicial protection, enshrined in Articles 7, 5, 4, 19, 8 and 25 of the American Convention, and the obligation to respect those rights, found in Article 1(1) of the treaty. Those facts could also constitute a violation of Articles I, III, IV and concordant Articles of the Inter-American Convention on the Forced Disappearance of Persons.

V. CONCLUSION

29. The Commission concludes that it is competent to hear this case and that under Articles 46 and 47 of the American Convention and Articles 30, 37 and concordant Articles of its Rules of Procedure, the petition is admissible.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare, without prejudging the merits of the complaint, that the petition is admissible with respect to the alleged violations of Articles 7 (right to personal liberty), 5 (right to humane treatment), 4 (right to life), 19 (rights of the child), 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention, and the obligation to respect those rights found in Article 1(1) of the treaty. It also declares the petition admissible with respect to Articles I, III, IV and concordant Articles of the Inter-American Convention on the Forced Disappearance of Persons.
2. To transmit this report to the State and to the petitioners
3. To make this report public, and publish 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 in the city of Washington, D.C., on the 22nd day of the month of October, 2003. (Signed): José Zalaquett, President; Clare K. Roberts, First Vice-President; Susana Villarán, Second Vice-President; Robert K. Goldman and Julio Prado Vallejo, Commissioners.