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Title/Style of Cause: Carlos Alberto Mojoli Vargas v. Paraguay
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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: Mojoli Vargas v. Paraguay, Petition 379/01, Inter-Am. C.H.R., Report No. 84/03, OEA/Ser.L/V/II.118, doc. 5 rev. 2 (2003)

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I. SUMMARY

1. On June 12, 2001 Mr. Carlos Alberto Mojoli Vargas lodged a petition with the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) against the Republic of Paraguay (hereinafter “Paraguay” or “the State”). The aforesaid petition alleges violation of Articles 5, 8, 9, 11, and 25 of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) to the detriment of Mr. Mojoli Vargas.
2. The petitioner accused the Paraguayan State of a series of alleged acts, which he describes as a persecution instituted against him, whereby he was allegedly arbitrarily suspended from his position as member of the Superior Tribunal of Electoral Justice of the Republic of Paraguay and he purportedly later coerced into resigning his position. He was allegedly implicated in four judicial proceedings for different matters. Furthermore, the petitioner and members of his family were allegedly the target of threats, harassment and various acts of intimidation.
3. The State argued that there have been no irregularities in the administrative and judicial proceedings involving the petitioner.
4. Having examined the petition, the Commission decided, in accordance with Articles 46 and 47 of the American Convention, to declare the petition admissible as regards alleged violation of Articles 8, 9, 11, 25 and 1(1) of the American Convention in connection with some of the violations alleged in the petition.

5. The Commission further decided to declare the petition inadmissible in respect of other violations alleged in the petition.

II. PROCESSING BY THE COMMISSION

6. On October 2, 2001 the Commission transmitted the pertinent portions of the petition to the Paraguayan State and requested it to reply within two months. The State later sought and was granted an extension in order to reply, which it did on January 25, 2002, and transmitted the appendices to its reply of March 1, 2002. The petitioner submitted additional information on several occasions, the pertinent portions of which were conveyed to the State.

III. POSITION OF THE PARTIES

A. Position of the petitioner

7. The petitioner says that in March 1999 he held the position of member of the Superior Tribunal of Electoral Justice of the Republic of Paraguay (hereinafter "TSJE"). He says that on March 17, 1999, he signed, together with Mr. Expedito Rojas B., a co-member of the TSJE, and Mr. Samuel Martínez Hustin, a member of the Electoral Tribunal of Misiones, whom they incorporated in the TSJE because the third member of the TSJE allegedly refused to sign, a resolution numbered 17/99, where by the TSJE decided:

To instruct the Colorado Party Republican National Association to convoke, within 10 days from notification of this resolution, a Special General Convention in order to reform the bylaws in respect of the points mentioned in the body of the instant resolution. In the event of failure to comply, this Tribunal shall issue said convocation.

8. The petitioner says that on March 18, 1999 the TSJE, composed of the above-mentioned persons, issued another resolution, numbered 18/99, in which it ordered "(...) protective measures for the property of the Electoral Justice System, the recovery of property taken from the Electoral Justice System, the placement of Electoral Justice vehicles in a closed parking lot, and a preliminary enquiry into the circumstances of the break-in at the Electoral Justice depot".

9. The petitioner says that on March 22, 1999, the Superintendency Council of the Supreme Court of Justice of Paraguay, composed of three justices of that Court, issued Resolution No. 136, whereby it was decided to impose a fine on the petitioner of 30 minimum daily wages and a suspension from office of 30 days. He says that the same resolution also punished the other two members of the TSJE who signed the aforesaid resolutions Nos. 17/99 and 18/99. Furthermore, it was also decided to refer the record to a criminal judge. One of the grounds for said resolution was to consider unlawful the composition of the TSJE following the alleged refusal of one of its members to sign said resolutions.

10. The petitioner holds that the aforementioned Superintendency Council of the Supreme Court was not legally qualified to punish him, since, under Article 225 of the Paraguayan Constitution the only State organ with authority to institute impeachment proceedings against members Superior Tribunal of Electoral Justice was the Congress of Paraguay. The petitioner

adds that said resolution violated his right of defense since he was not notified of the charges against him nor was he given an opportunity to defend himself.

11. He further alleges that there were irregularities in the issuance of resolution No. 136, since there is a later resolution with the same number that concerns another matter; furthermore there was another resolution numbered one that was also issued subsequently and likewise relates to a different matter.

12. He says that after resolution No. 136 of March 22, 1999 was issued a persecution was orchestrated against him and his family to force him to resign as a member of the TSJE, which included his implication in a number of criminal proceedings, threats, harassment, and various acts of intimidation.

13. In respect of the foregoing he mentions that four criminal proceedings were instituted against him: a) one for breach of public duty, in pursuance of resolution No. 136 of March 22, 1999, which remained open at the date of the petition despite the fact that the prosecutor had recommended acquittal of the petitioner; b) another for "computer sabotage", in which a lower court sentenced him to three years' imprisonment, which the Criminal Chamber of the Supreme Court of Justice lowered to one year in prison by Decision No. 634, of November 2, 2000. He adds that on August 9, 2001, the decision was adopted to dismiss the unconstitutionality suit filed against the aforesaid decision and that the sentence against him was commuted to a fine, which he has been paying monthly ; c) another for falsification of public documents involving study certificates belonging to the petitioner, which appears as brought on May 16, 1997, although the petitioner says that the real date of initiation is October 1999. He also says that said proceeding was reactivated on July 25, 2002, and that during this trial the State violated his right to a fair trial and right to freedom from ex post facto laws, because he was again charged with having committed the crime of falsification of public documents, a crime which he indicated does not exist in Paraguayan legislation; and, d) another for participation in the "alleged aggravated murder" of the then-Vice President of Paraguay, Dr. Luís María Argaña, on March 23, 1999. With respect to this proceeding, the petitioner says that he was freely acquitted after having been publicly branded the moral instigator of the crime.

14. He says that on April 6, 1999 he was compelled to resign his position. He says that the proceedings instituted against him were more a matter of publicity and intimidation than of investigation of facts. Furthermore "there were also threats to kill him and sexually assault his wife and daughter, accusations of theft, and persecution of his sons". He says that he was impeded from performing his functions and that his good name and reputation as a whole were tarnished.

15. He said that the text of the aforementioned resolution No. 136 was physically concealed from him for two years but that, nevertheless, on March 31, 1999 he attempted an unconstitutionality suit against that resolution before the Supreme Court of Justice, on which it would seem that no decision has yet been reached.

16. The petitioner claims that the allegations contained in the petition entail violation on the part of the Paraguayan State of the rights to humane treatment, a fair trial, freedom from ex post

facto laws, privacy, and judicial protection enshrined in Articles 5, 8, 9, 11, and 25, respectively, of the American Convention on Human Rights.

B. Position of the State

17. The State argues that it ratified the validity of resolution N° 136 of March 22, 1999, issued by the Superintendency Council of the Supreme Court of Justice. It says in that connection that the petitioner is right when he says that there are two resolutions with the same number but different dates. It says that the duplication in the numbering has to do with the fact that the Superintendency Council of the Supreme Court of Justice

has a numbering system for two folders: one folder containing resolutions of an administrative nature (judiciary procurements, fellowships, per diems, etc.) and another folder that contains resolutions of a jurisdictional nature (cautions, sanctions, etc.). When the resolution concerning Mr. Mojoli was issued the CSCSJ only had one folder with a sequential number system. In May 1999, Justice Elixeno Ayala (+) requested and obtained from the CSCSJ classification of resolutions in the above-described manner, since in his opinion the CSCSJ issued resolutions of different types. Thus, two resolutions appeared with the same number but different dates.

18. The State adds that the resolution that concerns Mr. Mojoli is not the only one “repeated”, since as a result of the aforementioned classification process the same occurred with other resolutions, thus there arose “a de facto situation that does not affect the legal validity of the resolutions of the CSCSJ”.

19. The State holds that the unconstitutionality suit brought by the petitioner against resolution N° 136 of March 22, 1999 is being processed, “the date of the last proceeding being September 13, 2001”.

20. The State says that the petitioner does indeed have four judicial proceedings pending: “a) for breach of public duty; b) for computer sabotage; c) for falsification of public documents; and, d) for murder.” It adds that:

in the first, the motion for provisional acquittal was denied; in the second, the enforcing court rejected the petitioner’s request to teach training courses on weapons; the third is still at the preliminary hearing stage, and the fourth was dismissed. Each of these cases runs its course and, as has been seen, they have produced different results, which implies their normal processing in different courts.

21. As regards the petitioner’s claims that he was the object of publicity that had injurious effects on his social environment, the State says that it shares the petitioner’s disquiet at his treatment by the press,

However, in Paraguay, the press is not subject to State control; injured parties may take action against publications, but unfettered respect for freedom of expression is guaranteed.

22. The State adds that the democratic process that began in Paraguay in 1989 has ensured a free press, “very often with harmful effects, such as in the instant case, but they are beyond the control of the State”.

IV. ANALYSIS OF ADMISSIBILITY

A. The Commission’s competence *ratione personae*, *ratione materiae*, *ratione temporis*, *ratione loci*.

23. The petitioner is entitled under Article 44 of the American Convention and Article 23 of the Rules of the Procedure of the IACHR to lodge petitions with the Commission concerning alleged violation of rights contained in the American Convention. As to the State, Paraguay is a party to the Convention and, as such, is responsible on the international plane for violations of said instrument. The alleged victim is a natural person, in respect of whom the State undertook to ensure the rights enshrined in the Convention. Accordingly the Commission has *ratione personae* competence to examine the petition.

24. The Commission has *ratione materiae* competence to take up the petition because it alleges violations of human rights protected by the American Convention at its Articles 5, 8, 9, 11, and 25. Furthermore, the Commission has *ratione temporis* competence inasmuch as the alleged violations occurred when the duty to respect and ensure rights recognized in the American Convention was in force for the Paraguayan State, which ratified the Convention on August 24, 1989. The Commission has *ratione loci* competence because the alleged violations occurred within the territory of the Republic of Paraguay, a country that ratified the American Convention.

B. Admissibility requirements for the petition

a. Exhaustion of domestic remedies

25. The Commission finds, with regard to resolution No. 136, issued by the Superintendency Council of the Supreme Court of Justice of Paraguay on March 22, 1999, which imposed a fine on the petitioner and suspended him for 30 days from his duties as a member of the TSJE, that the petitioner challenged said resolution by filing an unconstitutionality suit with the Supreme Court of Justice of Paraguay on March 31, 1999, and that, to date, no decision has apparently been issued thereon. The State claimed in this connection that the suit is being processed, but later failed to inform the IACHR that a decision has been issued on said unconstitutionality suit.

26. The IACHR finds in this respect that the aforesaid unconstitutionality suit was in principle a suitable remedy to challenge the aforementioned resolution, and that, to date, more than four years have elapsed since the processing of that unconstitutionality suit began. In respect of the foregoing the Commission concludes that there has been unwarranted delay in rendering a final judgment under the aforementioned domestic remedy, which constitutes grounds for the exception to the requirement of prior exhaustion of domestic remedies provided in Article 46(2)(c) of the American Convention.

27. As for the four judicial proceedings initiated by the Paraguayan State against the petitioner, the Commission notes that at the date of the instant report two of them have been closed and two remain pending. One of the closed cases concerns the homicide of the then-Vice President of Paraguay, Dr. Luís María Argaña, on March 23, 1999, in connection with which the petitioner was acquitted by judgment of September 15, 2000 of Criminal Court No. 2 in and for Asunción, Paraguay. That judgment concluded the proceeding as far as the petitioner was concerned, and therefore, domestic remedies in that connection were exhausted.

28. The second case closed concerns the proceeding for “computer sabotage”, in which the petitioner was sentenced by a lower court to three years’ imprisonment, a sentence which the Criminal Chamber of the Supreme Court of Justice lowered, by Decision No. 634, of November 2, 2000, to one year in prison. In this case, the Supreme Court of Justice issued a judgment of August 9, 2001 and decided to deny the unconstitutionality suit attempted against its decision of November 2, 2000. In this way, domestic remedies in relation to that proceeding were exhausted.

29. With respect to the two cases pending against the petitioner, the Commission notes that one of them deals with the investigation for breach of public duty instituted on March 30, 1999 in pursuance of resolution No. 136 of March 22, 1999. In that proceeding, Criminal Court No. 7 in and for Asunción, Paraguay, decided on August 16, 2000, to deny the motion for provisional acquittal lodged by the petitioner on February 28, 2000. The second case pending against the petitioner has to do with falsification of public documents and was apparently reopened on July 25, 2002.

30. In respect of the two aforementioned cases pending in which the petitioner is under investigation, the Commission notes that the State did not allege failure to exhaust domestic remedies, and therefore one may presume a tacit waiver of the right to invoke the objection of failure to exhaust domestic remedies.

31. In this respect, the Inter-American Court has indicated that “the objection asserting the non-exhaustion of domestic remedies, to be timely, must be made at an early stage of the proceedings by the State entitled to make it, lest a waiver of the requirement be presumed[SW2]”. [FN1] The IACHR is of the view that the State tacitly waived this objection.

[FN1] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987, para. 88.

32. The Commission underscores that the mere references by the Paraguayan State to the status of a number of pending proceedings in which Mr. Carlos Alberto Mojoli Vargas is involved does not constitute invocation of the objection of non-exhaustion of domestic remedies, since such an objection must be invoked clearly and expressly at an early stage of the proceeding before the IACHR.[FN2][SW3]

[FN2] In this respect the Court has noted that, “The briefs that the Government presented to the Commission during the processing of the case showed inter alia the evolution of the habeas corpus proceedings and the criminal aspect of Mr. Ernesto Rafael Castillo-Páez's disappearance. However, the Government did not clearly state its objection of non-exhaustion of domestic remedies at an early stage of the proceedings before the Commission (...)”. Inter-Am. Ct. H.R., Castillo Páez Case, Preliminary Objections, Judgment of January 30, 1996, para. 42; Inter-Am. Ct. H.R., Loayza Tamayo Case, Preliminary Objections, Judgment of January 31, 1996, para. 42.

b. Deadline for lodging the petition

33. As regards the proceeding concerning the unconstitutionality suit interposed by the petitioner against resolution No. 136 issued by the Superintendency Council of the Supreme Court of Justice of Paraguay on March 22, 1999, the Commission observes that no decision has been rendered in that case and that the petition presented to the IACHR on October 2, 2001 was lodged within a reasonable time.

34. As to the proceeding in connection with the homicide of the then-Vice President of Paraguay, Dr. Luís María Argaña, on March 23, 1999, the Commission notes that the petitioner was acquitted by judgment of September 15, 2000 of Criminal Court No. 2 in and for Asunción, Paraguay, and that the petition under examination was presented to the Commission on October 2, 2001; in other words, more than a year after the judgment that concluded the domestic proceeding. Accordingly, the petition is extemporaneous as regards the specific matter of the above-mentioned murder trial because it exceeds the six-month time limit mentioned in Article 46(1)(b) of the American Convention. Therefore, the Commission must declare that particular aspect of the petition inadmissible

35. Regarding the judicial proceeding for “computer sabotage,” the Commission notes that the case was closed by the judgment of the Supreme Court of Justice of August 9, 2001, and that the petition was lodged with the IACHR on October 2, 2001, within the six-month time limit contained in Article 46(1)(b)[SW4] of the American Convention.

36. As for the two proceedings pending against the petitioner; that is, the one regarding the investigation for breach of public duty and the one concerning the falsification of public documents, the Commission established supra that the State tacitly waived its right to invoke the objection of non-exhaustion of domestic remedies. As the Convention requirements of exhaustion of domestic remedies and submission within six months of the judgment that exhausts the domestic jurisdiction are independent, the Commission must determine whether the petition under review was submitted within a reasonable time. The reason for this is that, it having been determined that the State tacitly waived the requirement of prior exhaustion of domestic remedies, there is no date certain from which to calculate the six-month deadline. The lack of a date certain does not release the petitioner from the timely submission requirement. In that connection, the Commission, bearing in mind the particular circumstances of this petition, considers that this complaint, in respect of the above-mentioned proceedings against the petitioner for breach of public duty and falsification of public documents, was submitted within a reasonable period.

c. Duplication of proceedings and res judicata

37. The Commission sees no indication in the record that the petition presented is pending in another international proceeding, and it has received no information indicating that such a situation exists. Furthermore, it does not consider that it is the same as a petition or communication previously examined by the IACHR. Accordingly, the Commission finds that the requirements contained in Articles 46(1)(c) and 47(d) of the Convention have been met.

d. Nature of the violations

38. Article 47(b) of the American Convention provides that the Commission shall declare inadmissible any petition that does not state facts that tend to establish a violation of the rights guaranteed by that treaty.

39. The Commission considers that prima facie the facts alleged by the petitioner state facts that tend to establish a violation of the American Convention at Articles 8, 9, 11, and 25, for possible violation of the obligation to respect the rights to a fair trial, freedom from ex post facto laws, privacy, and judicial protection to the detriment of the alleged victim in the instant case. The foregoing applies exclusively with respect to: i) the violations alleged by the petitioner in regard of the issuance of resolution No. 136 delivered by the Superintendency Council of the Supreme Court of Justice of Paraguay on March 22, 1999; ii) the proceeding concerning the unconstitutionality suit brought by the petitioner against said resolution; iii) the proceeding for breach of public duty that was instituted against the petitioner pursuant to said resolution; and, iv) the proceeding for falsification of public instruments pending against the petitioner.

40. As to the violations alleged by the petitioner in connection with the proceeding against him for “computer sabotage”, in which the petitioner was convicted, the Commission finds that the petition does not state facts that tend to establish a violation of the rights guaranteed by the Convention, given that it is not alleged that the judgment delivered in said proceeding has been issued by an incompetent tribunal, that it was rendered outside the bounds of due process, or that it violates any other right enshrined in the American Convention.[FN3] In light of the foregoing, the Commission must declare the petition inadmissible in respect of this proceeding.

[FN3] The Commission has explained the general rules applicable to situations in which the IACHR may review, under what it terms the “fourth-instance formula, judgments of the domestic courts of states”. See in this regard, IACHR, Report No. 39/96, Santiago Marzoni, Case 11.673 (Argentina), Annual Report 1996.

V. CONCLUSION

41. The Commission concludes that it is competent to take up this petition and that it complies partially with the admissibility requirements in accordance with Articles 46 and 47 of the American Convention.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare, without prejudging the merits of the matter, that the petition is admissible as regards the violations alleged by the petitioners in connection with i) the issuance of resolution No. 136, delivered by the Superintendency Council of the Supreme Court of Justice of Paraguay on March 22, 1999; ii) the proceeding concerning the unconstitutionality suit filed by the petitioner against said resolution; iii) the proceeding for breach of public duty that was instituted against the petitioner pursuant to said resolution; and, iv) the proceeding for falsification of public instruments pending against the petitioner; and with respect to Articles 8 (fair trial), 9 (freedom from ex post facto laws), 11 (privacy), and 25 (judicial protection) of the American Convention, in conjunction with Article 1(1) of said treaty (obligation to respect the rights contained in the Convention).
2. To declare the petition inadmissible as regards the proceeding concerning the murder of Mr. Luís María Argaña, in which the petitioner was acquitted, because it was lodged with the IACHR extemporaneously; that is, after the six-month deadline contained in Article 46(1)(b) of the Convention Americana.
3. To declare the petition inadmissible as regards the proceeding against the petitioner for “computer sabotage” in which the petitioner was convicted, because the petition does not allege in that connection facts that tend to establish a violation of rights guaranteed by the American Convention, which constitutes a ground for inadmissibility in keeping with Article 47(b) of the American Convention Americana.
4. To transmit the instant report to the State and the petitioner.
5. 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., 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.