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Title/Style of Cause:	Maria Teresa Bulnes Acosta v. Honduras
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Decided by:	President: Jose Zalaquett; First Vice-President: Clare K. Roberts; Second Vice-President: Susana Villaran; Commissioners: Evelio Fernandez Arevalos, Paulo Sergio Pinheiro, Freddy Gutierrez, Florentin Melendez.
Dated:	13 October 2004
Citation:	Bulnes Acosta v. Honduras, Petition 11.735, Inter-Am. C.H.R., Report No. 64/04, OEA/Ser.L/V/II.122, doc. 5 rev. 1 (2004)
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I. SUMMARY

1. On September 9, 1996, María Teresa Bulnes Acosta, Esq. (hereinafter also “the petitioner”) denounced before the Inter-American Commission on Human Rights (hereinafter “the Commission,” “the Inter-American Commission,” or “the IACHR”), that the Republic of Honduras (hereinafter “the State,” “Honduras,” or the “Honduran State”) violated to her detriment the rights protected under Articles 8, 10, 24, and 25 of the American Convention on Human Rights.
2. María Teresa Bulnes Acosta, Esq. claims in her petition that she was dismissed from her position as First Instance Judge of Family Matters on July 5, 1992, without the benefit of any of the conditions stipulated in Honduran legislation for such a dismissal, and without fulfillment of the legal requirements regarding notification.
3. With respect to admissibility, the State argues, essentially, that the petitioner was notified of Supreme Court Decision 366, through which the First Instance Judge of Family Matters was ordered removed from her post and transferred to another unspecified position, on Friday, June 5, 1992, and not on Monday, June 8, as she claims. Honduras asserts that, as a result, the complaint filed by the petitioner on June 18, 1992, before the Judicial Career Council was filed after the 10 day time period established in Article 67 of the Judicial Career Law for appealing to that Council, and that it was therefore declared untimely in a June 9, 1996, resolution. The State likewise indicates that the instant petition is inadmissible because it was submitted to the Commission in an untimely manner and because domestic remedies had not been exhausted, since the petitioner should have pursued remedies in the contentious administrative and criminal jurisdictions before resorting to the international jurisdiction.

4. After having studied the factual and legal arguments presented by the parties, as well as the evidence provided, the IACtHR concludes in this report that the case is inadmissible as it is not colorable and decides to notify the parties and publish this information.

II. PROCEEDINGS BEFORE THE COMMISSION

5. The Commission opened the case of María Teresa Bulnes Acosta, Esq. on September 10, 1996, in accordance with Articles 46 and 47 of the American Convention on Human Rights and assigned it number 11.735. On June 2, 1997 (fs. 99), the Commission forwarded to the Honduran State the pertinent portions of the petition and gave it 90 days to respond. On April 13, and June 17, 1998, the Commission reiterated this request. On September 18, 1998, the Commission once again reiterated the request, granting the State a new deadline of 30 days to respond, with the admonition that, if it failed to respond, the provisions of Article 42 of its Rules of Procedures would be applied.

6. The response of the Honduran State was received on October 16, 1998. On December 17, 1998, the pertinent portions of the response were transmitted to the petitioner, who was granted a 45 day period in which to present her observations. On January 19, 1999, those observations were received and forwarded to the State.

7. On March 30, 1999, the State submitted its comments on the petitioner's observations, the pertinent portions of which were transmitted to the petitioner on April 5, 1999. On May 3, 1999, the petitioner presented her observations with respect to the comments issued by the Honduran State, and these were forwarded to the State. Subsequently, additional information was received from the State on July 1, 1999, and from the petitioner on August 20 and September 6, 1999.

8. On September 6, 1999, the Special Rapporteur and Vice President of the Commission, Professor Hélio Bicudo, visited Honduras and met with the Supreme Court of Justice at which time he raised the possibility of reaching a friendly settlement in the case, an effort that was unsuccessful.

9. Following an energetic exchange of additional information between the parties, Ms. Bulnes submitted additional information and documentation on March 19, 2004, which was forwarded to the State on the 23rd of the same month and year, and the State did the same on April 21, 2004. This information was transmitted to the petitioner on April 29, 2004.

III. POSITION OF THE PARTIES ON ADMISSIBILITY

A. Position of the petitioner

10. The petitioner was appointed First Instance Judge of Family Matters in a February 27, 1991 decision by the Supreme Court of Justice. The petitioner indicates that on Friday, June 5, 1992, as she was finishing work, an unknown person approached her and handed her copy of Official Letter 1162-SCJ-92, addressed to Priscila Romero Sánchez, Esq., which contained a

transcription of Supreme Court Decision 366 of June 3, 1992, ordering: a) the appointment of Ms. Romero Sánchez, Esq. as Interim Judge substituting Ms. Bulnes Acosta, Esq. and b) the transfer of María Teresa Bulnes, Esq. to another position. It was further ordered that this take effect on the date that Ms. Romero Sánchez assumed her position.

11. Ms. Bulnes claims that she did not consider this to be official notification since it was not addressed to her and did not comply with the provisions set forth in Articles 87, 88, 89 and 90 of Chapter VII "Notifications" of the Administrative Procedures Law, the pertinent language of which states that "notification of resolutions will be made in person..." (Article 87) "...through a faithful copy of the act in question" (Article 88) and "proof of notification shall be placed in the file, along with the day and time it was made, signed by the server, as well as the person served, should he wish or be able to sign it" (Article 89).

12. Ms. Bulnes states that on Monday, June 8, 1992, when she was in her office, the Director of the Judicial Career arrived, accompanied by Ms. Priscila Romero Sánchez, Esq., so that the latter could assume the position of First Instance Judge of Family Matters, heretofore occupied by her. At that time, the Secretary of the Court had delivered to her a blank envelope containing the original and a copy of Official Letter 1162-SCJ-92 "without any register to record its receipt." This action was recorded in the register of the First Instance Court of Family Matters, of which the petitioner was the judge, on June 8, 1992. Under the circumstances, the petitioner turned over her post to her colleague, Romero Sánchez, thereby acknowledging having been tacitly notified of the Decision.

13. The complaint indicates that on June 9, 1992, the day after having forfeited her post and after having received and accepted a verbal proposal made by the president of the Supreme Court of Justice that she accept another judgeship in the Sectional Court (Juticalpa), a proposal that was articulated through the Court Inspector, Víctor Manuel Lozano Esq., Ms. Bulnes sent a letter to that Court requesting that it officially inform her of the position she was to occupy.

14. The petitioner alleges that on June 18, 1992, she went to the Treasurer's Office to pick up her pay check for the month of June, but was given a paycheck covering only 4 days. The Treasurer's Office issued the check, and documented it with a copy of Decision 366.

15. According to the petition, on June 18, 1992, the petitioner filed a complaint before the Judicial Career Council requesting her reinstatement as a professional judge and payment of the back salary due her up until the date that this reinstatement was carried out. With this complaint, case file 43 was opened before the Judicial Career Council.

16. The petitioner indicates that on October 24, 1994, the Secretariat of the Judicial Career Council recommended to the Supreme Court of Justice that it add case file 43 to a list of more than eighty people who had been dismissed unjustifiably and whose social benefits were pending. The purpose of this action was to secure an order to pay the social benefits and compensation owed to the petitioner, in view of the fact that the announced transfer to another post had never materialized.

17. On November 2, 1994, the Supreme Court ruled unanimously to include Ms. Bulnes on the list of unjustifiably dismissed employees and ordered that her employment benefits and compensations be paid (See the Court's Act No. 60, Point 8, from the November 2, 1994 session). According to the petitioner, notwithstanding the Court ruling, the Personnel Department did not carry out the order because it did not indicate the date of dismissal and because there was no dismissal decision in Ms. Bulnes' file in order to calculate the amount that she should be paid. Despite this, the Personnel Department told her to come back later "while they consulted about how to resolve the conflict." She returned several times, as they requested, but the matter was never resolved.

18. On May 8, 1995, the petitioner drew up an affidavit certifying the contents of her personnel file and the file corresponding to complaint 43. In the latter case, the Notary certified that there was no Dismissal Decision in the file. On November 8, 1995, given the impossibility of carrying out the Supreme Court order, the petitioner filed a new motion in which she requested, considering the time that had transpired since her labor complaint had been filed (41 months), that she be reinstated to her position, assigned to a new position, or that an unjustified dismissal decision be issued. Should the latter alternative be selected, she requested payment of back wages due her from June 8, 1992 to the date that it took effect.

19. The petitioner affirms that she filed a complaint for violations of her human rights before the Human Rights Commission in Tegucigalpa which, on November 23 and December 5, 1995, sent notes to the Supreme Court in an attempt to resolve Ms. Bulnes' situation.

20. According to the petitioner, on January 22, 1996, she appeared before the Judicial Career Council where she verified that records of proceedings from June 1994 had been added to her file that had not been there on May 8, 1995, the date on which the Notary had certified the contents of that file through the aforementioned Affidavit. She states that these proceedings consisted of a document in which the Council, prior to accepting the complaint, asked its Secretariat to inform it of whether it had been filed in the proper form and in a timely manner by the petitioner. The Secretariat responded that the complaint had been filed in the proper form and in a timely manner by the petitioner.

21. The petitioner says that she was notified of a procedural hearing and attended it on January 23, 1996, in other words four years after filing her complaint (June 18, 1992). At the hearing, the Personnel Administration Director of the Supreme Court of Justice, in addition to stating, "We recognize the fairness of the complaint filed," filed a Statute of Limitations motion alleging, at this late stage of the proceeding, that the complaint had been filed after the statute of limitations had elapsed. This, even though the same Council had previously ruled that the complaint had been filed within the legal time limit, and had requested that the Court include the case on the list of unjustified dismissals. At the hearing, Ms. Bulnes claimed that she was notified of Decision 366 on June 8, 1992, and not on June 5 of that year, and she provided evidence of this.

22. The petitioner states that as a result of the January 23, 1996 procedural hearing, on February 9, 1996, the Council issued a ruling, four years after the events, and without prejudice to the Court's ruling, in favor of the statute of limitations motion filed by the Personnel

Administration of that Court, dismissing the claim for reinstatement and upholding the dismissal carried out pursuant to Decision 366 of June 3, 1992. Notification of the February 9, 1996, ruling was accomplished by way of a document entered into the Notifications Schedule of the Judicial Career Council on February 19, 1996.

23. On February 16, 1996, three days after this notification, the complainant filed a motion to declare the nullity of the proceedings as of January 3, 1996, the date on which the Judicial Career Council had ruled to admit the claim presented by the petitioner in June 1992. According to Ms. Bulnes, the Council processed this request and declared that the motion for nullity was inadmissible since a final judgment had been handed down previously on February 9, 1996. At the same time, the Council reprimanded the petitioner for offenses against the dignity and decorum of the Council and the petitioner was advised of this resolution through a notification dated March 16, 1996. This, added the petitioner, put an end to the administrative proceedings.

24. The petitioner presented evidence that the Judicial Career Council issued a final decision on April 30, 1996 stating that "Having concluded the proceedings in the instant file, with the preceding final ruling (that of February 28, 1996), and with no further remedy available, let this case be closed."

25. Based on the foregoing, the petitioner asserts that the ruling of February 28, 1996, is the final decision in the case and that is the date that should be used to calculate the six month period set forth in Article 46 (1) (b) of the Convention. She points out that she submitted her petition on September 10, 1996, in other words, within the aforementioned time period, and therefore requests that her petition be declared admissible.

26. With respect to the State's subsequent argument that she had rejected payment of compensation and disagreed with such payment, the petitioner reiterates that the payment ordered by the Supreme Court was never carried out because that Court failed to establish the date of dismissal. This prevented the Personnel Administration Office from finding the legal basis that would enable it to establish, from an accounting and legal standpoint, the amount that she should be paid in benefits and compensation, since in the files of that office, her personnel file was still filed under Active Judges.

27. With respect to the State's position that she should have requested enforcement of the judgment in the administrative jurisdiction, the petitioner responds that Article 31 of the Regulation of the Judicial Career Council establishes that no ordinary or extraordinary remedy will be admitted against the rulings of the Council. In addition, Article 3 of the same legal instrument establishes that the Judicial Career Council is the maximum authority responsible for the Judicial Career System and its main function is to settle conflicts that arise in the application of the Judicial Career Law and its regulations.

28. Moreover, the petitioner says that in the unlikely event that the Commission should consider that exhaustion of remedies the contentious administrative jurisdiction is a step that precedes an appeal to the Inter-American system of protection, it would apply in her case given the unwarranted delay in resolving her claim, the exception set forth in Article 46 (2) (c) of the Convention.

B. Position of the State

29. On October 16, 1998, the State of Honduras responded to the petition, claiming that it was inadmissible for having been presented after the allowed time period had elapsed. In this regard, the State says that the petitioner claims to have been notified of the Final Resolution by way of a notification document recorded in the Notifications Schedule of the Judicial Career Council on March 16, 1996, which became firm on March 18, 1996, so that the petition was submitted on July 2, 1997.

30. The State of Honduras argues that María Teresa Bulnes Acosta Esq. failed to file the applicable legal and court actions in the domestic jurisdiction, allowed deadlines for pursuing the pertinent actions to elapse and, on other occasions, pursued actions that did not correspond to the matter being heard. It adds that the rulings and decisions issued against the petitioner do not constitute a denial of justice since at all times the State respected legal due process and provided access to remedies guaranteed under the Constitution and Honduran Law.

31. The State claims that domestic remedies have not been exhausted by the petitioner, since in order to claim damages allegedly caused by the Judicial Career Council or the Supreme Court of Justice, she should have filed suit against the State of Honduras in the contentious administrative venue.

32. The State recognizes that it advised Ms. Bulnes that she would be transferred to another post and that this transfer never materialized and asserts that the petitioner accepted her dismissal from her post.

33. The State adds that on June 18, 1992, the petitioner submitted to the Judicial Career Council a complaint requesting reinstatement, the payment of back wages, and a hearing to present evidence. Nonetheless, according to the State, the Judicial Career Council did not convene until 1994.

34. The State asserts that on October 24, 1994, the Secretariat of the Judicial Career Council asked the Supreme Court of Justice (Official document CCC-036/96) to include Ms. Bulnes on the list of officials who were claiming benefit payments for involuntary dismissal and that the request was accepted by the Court. Nonetheless, due to a "simple lapse of the Secretariat" the file number and petitioner's name were not included on the list, which prevented the payment of compensation.

35. The State of Honduras states that the petitioner filed a motion before the Judicial Career Council on November 17, 1994, requesting clarification of her employment status with the Judiciary. Subsequently, on November 8, 1995, the petitioner submitted before the same body another motion requesting that the legal error be corrected, and that the arbitrary action taken and rights violations committed be rectified.

36. In light of the foregoing, the Judicial Career Council, on January 3, 1996, issued a decision accepting the petitioner's complaint and scheduled a hearing for January 23, 1996, at

which time the petitioner and the Personal Administration Office of the Supreme Court should present the evidence they deemed relevant.

37. On January 22, 1996, the petitioner was personally notified of the hearing. Both sides presented evidence at the hearing, which was held on January 23. The State indicates that among the evidence submitted by the Personnel Administration Office at the hearing, was a letter dated June 9, 1992, sent by the complainant to the Secretary of the Supreme Court of Justice, in which she stated that she was aware that her replacement had been appointed and her dismissal from the post of First Instance Judge of Family Matters in Francisco Morazan Department on June 5, 1992.

38. The State asserts that on February 1, 1996, a hearing was held for personal inspection of evidence in the First Court of Family Matters of Francisco Morazán and in the Secretariat of the Supreme Court of Justice by members of the Judicial Career Council. According to the respective act, in the latter institution the members found that Official Letter 1162-SCSJ-92 of June 3, 1992, appears in the Copies of Official Documents Register, Volume 1 which states, on the upper right hand portion, that the various transcriptions of Decision 366 were received in the Secretariat of the First Instance Court of Family Matters on June 5, 1992. At the end in the signature area of the transcription appears "that the respective copies were taken for 1) María Teresa Bulnes; 2)..."

39. In a February 9, 1996 ruling, the Judicial Career Council, by unanimous vote, dismissed the motion for reinstatement filed by the petitioner and upheld her dismissal.

40. The State adds that, following the decision of the Judicial Career Council, Ms. Bulnes filed a motion on February 16, 1996, requesting the absolute nullity of the proceedings and reserving the right to file suit before the Attorney General of the State and before the criminal court of jurisdiction for acts that might constitute a criminal offense. The request was based on the fact that the Council reopened a proceeding that was already concluded. In response to this request, the Council adopted a resolution, the pertinent portion of which states as follows:

TO DENY, as inadmissible, by virtue of the fact that the judgment delivered in the same matter on the ninth of February of nineteen hundred ninety-six, resolved her request for reinstatement, a judgment that is final and firm. The proceedings relating to the request for reinstatement were initiated by the claimant even after the recommendation of payment of benefits that the petitioner mentions. In addition, the person now moving for nullity attended the procedural hearing scheduled for the twenty-third of January, nineteen hundred and ninety six and was even accompanied by a Legal Professional to assist her. She responded to the challenges made by the Personal Administration Office of the Judiciary and offered, on her own behalf, the evidence that she deemed necessary, proceedings that she did not object to at the time, and of which she is now requesting nullity. Likewise, it is well known than nullity is only valid when there has been a violation of the law of defense and/or substantive aspects of the trial, which does not occur in civil proceedings [autos]. The petitioner, María Teresa Bulnes, stands reprimanded for her offenses and threats against the dignity and decorum of the Judicial Career Council. LET IT BE SO NOTIFIED.

41. The Honduran State adds that pursuant to the recommendation of the Secretariat of the Judicial Career Council, the Supreme Court of Justice authorized the payment of employment benefits to Ms. Bulnes based on her respective salary and seniority. It adds that the payment of compensation has not been carried out because the petitioner is not in agreement regarding the parameters and criteria for the calculation to be applied and that she should have pursued enforcement of the judgment in the contentious administrative jurisdiction and the criminal jurisdiction.

42. In light of the foregoing, the State concludes that the final and definitive Resolution that ended the legal proceeding became firm on February 19, 1996, which means that the petition was not filed in a timely manner and it asks the Commission to declare it inadmissible.

IV. ANALYSIS

A. The Commission's Competence ratione personae, ratione loci, ratione temporis and ratione materiae

1. Competence ratione personae

43. Pursuant to Article 4 of the American Convention, the petitioner is entitled to submit petitions before the Commission. The petition identifies as the alleged victim an individual on whose behalf Honduras has undertaken to respect and guarantee the rights enshrined in the American Convention. Insofar as the State is concerned, the Commission observes that Honduras is a State Party to the American Convention, which it ratified on September 8, 1977. Therefore, the Commission has competence ratione personae to examine the petition.

2. Competence ratione loci

44. The Commission has competence ratione loci to take up the petition inasmuch as it claims violations of rights protected by the American Convention which allegedly occurred within the territory of a State Party to that treaty.

3. Competence ratione temporis

45. The Commission has competence ratione temporis inasmuch as the obligation to respect and ensure the internationally protected rights was in force for the State on the date the violations claimed in the petition allegedly occurred, since Honduras ratified the American Convention on September 8, 1977.

4. Competence ratione materiae

46. Finally, the Commission has competence ratione materiae, because the petition claims violations of human rights protected by the American Convention on Human Rights.

B. Requirements for admissibility of the petition

Exhaustion of domestic remedies

47. Article 46(1) of the American Convention on Human Rights establishes that the admission of a petition or communication presented under Articles 44 or 45 by the Commission, shall be subject to the requirement "that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law."

48. The State claims that the petitioner failed to satisfy the requirement of exhaustion of domestic remedies because she did not file suit for alleged damages in the contentious administrative venue, the only one competent to resolve matters having to do with the financial responsibilities of the State and State entities. The State likewise asserts that Ms. Bulnes also failed to exhaust remedies in the criminal law jurisdiction, although she reserved the right to pursue this avenue in her motion of February 16, 1996.

49. With respect to criminal remedies, the Commission believes that a simple reservation made by the petitioner does not amount to an obligation on her part to exhaust such remedies. Nonetheless, the petitioner should have exhausted remedies in the contentious administrative jurisdiction to file suit for compensation payment once the Judicial Career Council had rendered a final decision regarding her dismissal.

50. In light of the foregoing, the Commission believes that the State's objections have merit and that Ms. Bulnes failed to exhaust domestic legal remedies in Honduras.

Therefore, there is no need for the Commission to examine the remaining requirements for admissibility.

V. CONCLUSIONS

63. The Commission concludes that it lacks competence to hear the petition lodged by the petitioner, Attorney María Teresa Bulnes Acosta and that the petition is inadmissible due to failure to exhaust domestic remedies.

64. Based on the factual and legal arguments presented above,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case inadmissible due to failure to exhaust domestic remedies.
2. To advise the parties of this decision, and
3. To publish this report and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in Washington, D.C., on the 13th day of the month of October, 2004. (Signed): José Zalaquett, President; Clare K. Roberts, First Vice President; Susana Villarán, Second Vice President;

Commissioners Evelio Fernández Arévalos, Paulo Sergio Pinheiro, Freddy Gutiérrez, and Florentín Meléndez.