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| Title/Style of Cause: | Beatriz E. Pinzas de Chung v. Peru |
| Doc. Type: | Decision |
| Decided by: | President: Clare K. Roberts; Second Vice-President: Paulo Sergio Pinheiro; Commissioners: Evelio Fernandez, Jose Zalaquett, Freddy Gutierrez, Florentin Melendez. Commission Member Susana Villaran, a national of Peru, did not take part in the discussion and voting on this case, in accordance with Article 17(2) of the Commission's Rules of Procedure. |
| Dated: | 9 March 2005 |
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| Editor's Note: | The text of footnote 4 is missing in the original. |
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I. SUMMARY

1. By petition submitted to the Inter-American Commission on Human Rights (hereinafter “the IACHR” or “the Commission”) on November 5, 1999, Beatriz E. Pinzas de Chung (hereinafter “the petitioner”) alleged that the State of Peru (hereinafter “Peru”, “the State”, or “the Peruvian State”) violated her right to judicial protection enshrined in Article 25 of the American Convention on Human Rights (hereinafter the “Convention” or “American Convention”). The alleged violation concerns a judgment handed down by the Civil Chamber of the Superior Court of Lima, which declared unfounded a complaint for damages filed by Beatriz E. Pinzas de Chung for injuries arising from an alleged false criminal accusation against her. On March 16, 2001, the petitioner added further complaints to her petition to the Commission and alleged violation of due process guarantees because of an irregularity in the notification of an appeal filed by the opposing party against the decision on assessment of procedural costs incurred in the complaint for damages.

2. The State, for its part, argues that the petition does not state facts that tend to establish a violation of rights guaranteed in the American Convention and requests that the petition be declared inadmissible pursuant to Article 47(b) of the Convention.

3. In this report, the Commission analyzes the information available and concludes that the facts alleged in the petition do not tend to establish a violation of the American Convention. Consequently, it declares the petition inadmissible for failure to meet the requirement contained

in Article 47(b) of the Convention, and decides to notify the parties of its decision and publish the instant report.

II. PROCESSING BY THE COMMISSION

4. The Commission took receipt of the petition from Beatriz E. Pinzas de Chung on November 5, 1999, and additional complaints on May 30, 2000 and March 16, 2001, respectively. On April 26, 2001, the Commission sent another note to the petitioner requesting her to provide updated information regarding the remedies attempted under the domestic jurisdiction. The petitioner provided the information requested in a communication of April 30, 2001.

5. The Commission assigned the petition number 0504/99 and, on July 13, 2001, transmitted the pertinent portions to the Peruvian State granting it two months to submit its observations.

6. In a communication of September 14, 2001, the State requested an extension of the deadline to reply to the request and was granted an additional 30 days.

7. In a note of November 30, 2001, the State submitted its reply to the petition. On January 15, 2002, the Commission transmitted the pertinent portions of the State's brief to the petitioner and gave her 30 days to comment. The petitioner sent her reply on February 19, 2002, and it was forwarded to the State on March 5, 2002.

8. On July 21, 2003, the Commission informed the parties that it would proceed in accordance with Article 37(3) of its Rules of Procedure and granted each two months to submit their final observations on the merits of the petition. The petitioner transmitted those observations on September 26, 2003, and the State on December 12 of that year. The State submitted the respective appendices to its observations by means of a note of January 13, 2004.

III. POSITIONS OF THE PARTIES

A. The petitioner

9. The petitioner says that she started to work at the Ministry of Energy and Mines in June 1971 as a secretary in the administrative area and that in June 1988 she was appointed member of the board of Minero Perú S.A. She asserts that she subsequently occupied the posts of Vice President and President of the Board, resigning from the latter post on August 15, 1990.

10. The petitioner claims that during the two years and two months that she served on the board of Minero Perú S.A., she received a board fee of 10 new soles along with her salary as Manager of Promotion and Marketing of Banco Minero del Perú. The legal counsel and the new management of Minero Perú S.A. were fully aware of that remuneration.

11. According to the petitioner, while serving as a board member of Minero Perú S.A., Memorandum of Direct Negotiation Meeting No. 4 proposed to grant the employees a pay rise of

100% with the exclusive purpose of averting a strike that could cause severe losses to the company.

12. The petitioner says that ultimately, the new management did not approve the aforementioned wage increase proposal and the company workers called a strike for 42 days. Such a long stoppage caused the company huge losses that forced the Ministry of Labor to intervene and issue Sub-Directorate Decision 469-90-1SD-NEC of September 19, 1990, which approved the proposed pay rise of 100%. The petitioner says that in said decision, the Ministry of Labor ordered the company to reach an agreement with the workers. On September 27, 1990, the workers signed Final Memorandum of Collective Agreement 1990-1991, whereby the new management awarded an increase of 155% to put an end to the protracted strike, which had caused the company serious economic harm.

13. The petitioner argues that if the increase proposed by the board on which she served had been approved, the daily cost of the strike to the company would have been \$21,000 instead of \$213,000 or, counting the 42 days that the strike lasted, \$8,946,000.

14. The petitioner goes on to say that six months after leaving the company; that is, on February 15, 1991, the representatives of Miner Perú S.A. filed criminal charges against the members of the board under the previous management for the alleged crimes of embezzlement and misappropriation of funds. She holds that the company acted in bad faith because it accused her of the aforementioned offences based on falsehoods, such as allegedly paying the increase, with the resulting financial harm to the company. The petitioner affirms that, while she had proposed a wage increase of 100% to avert an imminent strike at the company, that increase was never approved by the board on which she served; indeed, it was never put into effect. In sum, the petitioner says that the capital of the company could never have been affected by a proposal that was never implemented.

15. The petitioner says that based on the criminal charges leveled against her, the judge opened an investigation and ordered her detention. That order was later revoked for lack of evidence to justify it. She contends that the order for her arrest and the four years that she unjustly underwent criminal prosecution sullied her honor and reputation and negatively affected her professional and family life.

16. She further states that the criminal proceeding concluded on August 24, 1995, when the Tenth Criminal Chamber of the Superior Court of Lima found insufficient merits to move on to an oral hearing and ordered the case closed.

17. The petitioner maintains that she filed a complaint in which she claimed the sum of two million nuevos soles in damages for the false and malicious accusation against her. She argues that her complaint was based on Article 1982 of the Civil Code, which provides that a complaint is admissible when a criminal charge is pressed in the knowledge that it is false or when there is a lack of reasonable grounds to press charges. In the opinion of the petitioner, the charges were filed in the knowledge that the alleged wrongdoings were false and that no reasonable grounds existed to support such charges since the increase was never put into effect to the detriment of the company.

18. The complaint was accepted by the Seventh Civil Court of Lima in a ruling of March 31, 1998, which ordered Minero Perú S.A. to pay the petitioner the sum of 150,000 nuevos soles for injury to her reputation. The respondent company appealed this decision and the Third Civil Chamber, Sub-Chamber A for Summary Proceedings and Hearings of the Superior Court of Lima, in a judgment of April 16, 1999, decided to revoke said decision and, consequently, to declare the complaint for damages unfounded.

19. The petitioner argues that the ruling that declared her complaint unfounded ignores evidence that demonstrates the injuries caused, as well as existing case law on such matters. Moreover, she affirms that said ruling does not contain clear reasoning but merely repeats the arguments invoked by the respondent company in its defense. Additionally, she argues that the decision is contrary to the express and clear text of Article 1982 of the Civil Code and that in another similar case the same judge who was involved in her case voted differently and upheld the lower court judgment that admitted the complaint for damages.

20. The petitioner concludes her original petition, alleging that the State of Peru violated Article 25 of the American Convention by depriving her of her right to just compensation.

21. On May 30, 2000, the petitioner added information to her original petition in which she classed the assessment of procedural costs incurred in the complaint for damages as excessive.

22. The petitioner provided additional information on March 16, 2001, in which she alleged violation of the right to a fair trial as a result of a tardy notice that purportedly prevented her from joining in a timely fashion the appeal lodged by the opposing party and, thus, from obtaining a reduction in the procedural costs determined at first instance.

23. Indeed, the petitioner says in this connection that, by Decision 41 of August 18, 2000, the 55th Civil Court of Lima set the fees of the representative of the winning party at 17,000 nuevos soles, and that when said decision was appealed by Minero Perú S.A., the aforementioned court granted the appeal but neither informed her of the approval of the appeal, nor forwarded the appeal filed by the company to her.

24. The petitioner claims that, faced with this situation, on November 24, 2000, she requested nullity of the proceedings. However, her request was denied. She says that to her surprise the appeal was forwarded to her on December 7, 2000, when it was already under examination by the superior tribunal. The petitioner argues that, even so, she replied to the forwarded proceedings and requested that the fees be lowered; however, her petition was not examined.

B. The State

25. The State requests the petition to be declared inadmissible under Article 47(b) of the Convention, pursuant to Article 34(a) of the Commission's Rules of Procedure, arguing that it does not state facts that tend to establish a violation of the rights guaranteed in the Convention.

26. The State holds that there is no violation of Article 25 of the Convention in this case, inasmuch as the petitioner attempted the judicial remedies available to her for the protection of her rights.

27. The State says that the right to judicial protection should be understood as the right of every person to approach the courts for the settlement of a dispute by a reasoned decision. It says that in this case the decision of the courts was consistent with the law and duly founded and the fact that the claims of the petitioner were not admitted does not mean that her right to judicial protection has been violated.

28. According to the State, the decision of the Civil Chamber of the Superior Court of Lima, which rejected the petitioner's complaint, was founded on criteria set down in the Civil Code on the award of damages arising from false accusations.

29. The State mentions that the Commission cannot act as a fourth instance and reiterates, therefore, its request that the petition be declared inadmissible bearing in mind that it does not state facts that tend to establish a violation of the rights recognized in the Convention.

IV. ANALYSIS

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

30. The Commission is competent to examine the subject matter of this complaint, which refers to alleged violation of a right enshrined in Article 25 of the American Convention.

31. The petitioner is entitled, under Article 44 of the American Convention, to lodge complaints with the IACHR. The petition names as alleged the victim an individual on whose behalf Peru undertook to respect and ensure the rights enshrined in the American Convention. The Commission therefore has *ratione personae* competence to examine the petition.

32. The Commission is competent *ratione loci* to consider the petition inasmuch as it alleges violations of rights protected by the American Convention which are said to have taken place within the territory of a state party to said treaty.

33. The IACHR is competent *ratione temporis*, because the facts alleged in the petition occurred when the obligation to respect and ensure the rights recognized in the American Convention was already in force for the Peruvian State. The Peruvian State ratified that Convention on July 28, 1978. The petition in question alleges events that occurred after the date of ratification of the American Convention.

B. Admissibility requirements for the petition

1. Exhaustion of domestic remedies

34. Article 46 of the American Convention provides,

1. Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements:

a. that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law;
[...]

2. The provisions of paragraphs 1.a and 1.b of this article shall not be applicable when:

- a. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
- b. the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
- c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

35. The Commission notes that the State has not challenged this point; that is, it has not alleged failure to exhaust domestic remedies in any of its communications.

36. The State recognized that the decision of Sub Chamber “A” for Summary Proceedings and Hearings of the Third Civil Chamber of the Superior Court, which revoked the lower court judgment on damages, was rendered *res judicata* because it was not appealed in cassation. The State held, furthermore, that cassation does not constitute a third instance as the Court of Cassation does not reconsider the facts, but merely limits itself to examination of the correct application and interpretation of objective law.[FN2]

[FN2] Brief No. 99-2001-JUS/CND-SE, 2.9 and Brief No. 81-2003-JUS/CND-SE, 2.8 submitted by the State enclosed in the notes of November 30, 2001 and December 11, 2003, respectively.

37. As to the proceeding in which the procedural costs were assessed, the Commission finds that remedies were also exhausted with the decision of January 5, 2001, issued by the Chamber for Summary Proceedings and Hearings of the Superior Court of Lima, which confirmed Decision 41 of the 55th Civil Court of Lima of August 18, 2000, which assessed procedural costs at 17,000 nuevos soles.

38. The Commission, therefore, considers that the remedies under domestic law have been exhausted in this case and, accordingly, the requirement provided in Article 46(1)(a) of the Convention has been met.

2. Deadline for lodging the petition

39. Article 46 of the American Convention provides,

1. Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements:

[...]

b. that the petition or communication is lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment;

40. The IACHR received the petition on November 5, 1999, as shown by the reception stamp of the Executive Secretariat. The record does not contain a copy of the official notice of the final decision, namely the ruling of the Civil Chamber of the Superior Court of Lima. However, the Commission considers that the petitioner took cognizance of said decision on May 12, 1999.

41. Indeed, the copy in the record of the aforementioned decision bears a stamp dated May 12, 1999, together with the signature of the clerk of Sub Chamber "A" for Summary Proceedings and Hearings of the Superior Court of Lima, which permit the conclusion that this is the date on which the copies of the decision would have been issued.

42. Therefore, taking May 12, 1999 as the starting point to determine the time limit provided by the Convention, and November 5 of that year as the date of receipt, and, mindful that the State has made no objection invoking noncompliance with this requirement, the Commission concludes that the petition was lodged within said deadline and, consequently, that this admissibility requirement is met.

3. Duplication of proceedings and res judicata

43. It does not emerge from the record that the subject matter of the instant petition is pending in another international proceeding for settlement, or that the petition is substantially the same as one previously studied by the Commission. Accordingly, Commission concludes that the requirements set forth in Article 46(1)(c) and 47(d) of the Convention have been met.

4. Nature of the alleged violations

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

45. In accordance with the aforementioned article, the Commission proceeds, therefore, to examine the facts alleged in the petition on this occasion in order to determine if they amount to a violation of Article 25 of the Convention as the petitioner asserts.

46. The petitioner argues that the Peruvian State violated the aforementioned article to her detriment in the proceeding for damages that she instituted against the company Minero Perú S.A.

47. According to the petitioner, that violation was committed with the decision of the Civil Chamber for Summary Proceedings and Hearings of the Superior Court of Lima, which revoked the lower court judgment and, therefore, ruled the complaint for damages unfounded. The petitioner is of the opinion that the State of Peru, in rejecting her complaint, has failed to provide effective judicial protection for her right.

48. Indeed, the petitioner affirms that the complaint for damages was admissible based on the injury to her honor caused by the false and reckless criminal accusation filed against her by Minero Perú S.A.. She considers the judgment of the Civil Chamber of the Superior Court of Lima to be unfounded as it distorts the facts so as not to meet the prerequisites of Article 1982 of the Civil Code.[FN3] She holds that the company did not act in legitimate exercise of a right but with malicious intent; in other words, in the knowledge that the accusation was false. According to the petitioner, that judicial organ issued a decision contrary to the text of the aforementioned Civil Code.

[FN3] Article 1982, Civil Code of Peru .- Liability for false accusation

A person shall be liable for compensatory damages if they accuse another person of a punishable act before a competent authority in the knowledge that the accusation is false.

49. The State, for its part, supported the decision of the Civil Chamber of the Superior Court of Lima, and said that the decision was based on guidelines set forth in the Civil Code for the award of indemnity for injuries arising from false accusations.

50. The question raised by the petitioner would require a review by the IACHR of facts proven in the domestic courts in order to determine whether or not there are reasonable grounds to justify the criminal action brought by Minero Perú S.A.. and its resulting liability. The question would also require interpretation of rules contained in the Civil Code that govern the right to compensation for injury arising from false accusations.

51. It should be recalled that the Commission does not have jurisdiction to act as a fourth instance with respect to decisions made by legal entities that have adopted procedures that do not reveal violations of due process or other human rights guaranteed by the American Convention. The mere disagreement on the part of the petitioners with the interpretations of the relevant legal provisions by the Peruvian authorities and with the appraisal of the proven facts in the case is not sufficient to serve as proof of the alleged violation of the aforementioned international instrument.

52. In this respect, the Commission reiterates,

Under the preamble of the American Convention on Human Rights, the protection that the organs of the inter-American system for the protection of human rights offers is intended to complement the protection afforded by the local courts.[FN4] The Commission cannot take upon itself the functions of an appeals court in order to examine alleged errors of fact or law that local courts may have committed while acting within the scope of their jurisdiction, unless there is

unequivocal evidence that the guarantees of due process recognized in the American Convention have been violated.[FN5]

[FN5] IACHR, Report 122/01, Petition 0015/00, Wilma Rosa Posadas (Argentina), October 10, 2001, par. 10

53. The information in the record indicates that the petitioner had access to the various remedies under domestic law to satisfy her legal claims. The mere fact that decisions proved unfavorable to her cannot be construed as a violation of the right to judicial protection. In this connection, the Commission has determined in other cases that “[t]he State’s obligation to administer justice is a guarantee of the means but not of the outcome, hence, its duty is not breached just because the outcome does not satisfy all the petitioner’s claims.”[FN6]

[FN6] Ibid, par. 9

54. In sum, the petitioner’s claims were submitted for examination and decision by the domestic judicial organs, which did not admit her complaint based on a reasonable interpretation of the relevant legal standards. A new analysis of merits of the instant petition would convert the Commission into a “fourth instance,” given that it would be reviewing a reasoned decision adopted by a competent organ within its legal powers granted by the laws of the respondent state.

55. In addition, the petitioner charges irregularities in the proceeding for assessment of procedural costs in the civil suit for damages, the amount of which she considered unjust and excessive. In particular, the petitioner alleges that the official notice of the admittance of the appeal of the respondent company was forwarded to her late. In her opinion, this irregularity prevented her from requesting a reduction of the costs in a timely and appropriate manner.

56. The petitioner does not mention which right under the Convention was violated; however, based on the facts described and the allegations made, the Commission infers that the petitioner refers to Article 8(1) of the aforementioned human rights instrument.

57. Having analyzed the arguments of the petitioner together with the information in the record, the Commission concludes that a study of the aforesaid allegations would entail an interpretation of articles of Peruvian procedural laws in the light of the measures adopted in the domestic proceeding, which is a function that pertains to the jurisdiction of the domestic courts. An analysis of this nature would make the Commission an appellate court for alleged procedural errors that should have been brought up and corrected in a timely manner in the domestic plane through the procedural remedies provided in the Civil Procedural Code of Peru.

58. The Commission considers that in the proceeding for assessment of procedural costs both parties had the same opportunities to argue their respective positions and, consequently, in accordance with Article 47(b) of the American Convention, it concludes that the facts alleged by

the petitioner with respect to violation of Article 8 of the Convention do not tend to establish violations of the judicial guarantees protected by said instrument.

59. Based on the foregoing, the Commission finds that it is not competent to decide the merits of the matter and, therefore, abstains from its analysis.

V. CONCLUSIONS

60. The IACHR has determined in the instant report that the facts described do not amount to a violation of the American Convention and, consequently, declares the petition inadmissible for failure to meet one of the requirements provided in said Convention. Accordingly, it is not necessary for the Commission to proceed with an examination of merits in the matter. Based on the foregoing factual and legal arguments,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES TO:

1. Declare the instant petition inadmissible.
2. Notify the petitioner and the State of its decision.
3. 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 March 9, 2005. Signed: Clare K. Roberts, President; Susana Villarán, First Vice President; Paulo Sérgio Pinheiro, Second Vice-President; Commission Members: Evelio Fernández, José Zalaquett, Freddy Gutiérrez and Florentín Meléndez.