

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 47/05; Petitions 448/01, 666/01
Session: Hundred Twenty-Third Regular Session (11 – 28 October 2005)
Title/Style of Cause: Juan Santaella Telleria and Julio Cesar Leanez Stevert v. Venezuela
Doc. Type: Decision
Decided by: President: Clare K. Roberts;
First Vice-President: Susana Villaran;
Second Vice-President: Paulo Sergio Pinheiro;
Commissioners: Evelio Fernandez Arevalos, Jose Zalaquett, Florentin Melendez.
Commissioner Freddy Gutierrez, of Venezuelan nationality, did not participate in the consideration or voting on this petition, in accordance with Article 17.2 (a) of the Commission's Rules of Procedure
Dated: 12 October 2005
Citation: Santaella Telleria v. Venezuela, Petition 448/01, Inter-Am. C.H.R., Report No. 47/05, OEA/Ser.L/V/II.124, doc. 5 (2005)
Represented by: APPLICANT: the International Service for Human Rights
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I. SUMMARY

1. On August 9 and on September 24, 2001, the Inter-American Commission on Human Rights (hereafter "the Commission" or "the IACHR") received two petitions submitted by Julio Cesar Leañez Sievert and the organization International Service for Human Rights (ISHR, hereafter "the Petitioners") on behalf of Messrs. Julio Cesar Leañez Sievert and Juan Santaella Telleria, respectively (hereafter "the presumed victims"), alleging the responsibility of the Bolivarian Republic of Venezuela (hereafter "the State" or "the Venezuelan State") for violating the right to due process of Messrs. Julio Cesar Leañez Sievert and Juan Santaella Telleria in the course of criminal proceedings against them.

2. The petitioners charged that the State was responsible for violating the rights to a fair trial (Article 8), to freedom from ex post facto laws (Article 9) and to judicial protection (Article 25) of the American Convention, taken in relation with the general obligation to respect and guarantee rights established by Article 1(1) of that treaty. With respect to admissibility, the petitioners argued that there were no applicable remedies within domestic jurisdiction against the ruling issued by the Supreme Court of Justice, which allegedly violated their rights. They also declared that this matter was not the subject of any other international proceeding.

3. In response, the Venezuelan State argued that the case was the subject of ongoing criminal proceedings, indicating that the available domestic remedies had not been exhausted.

The State also argued that the violations alleged by the petitioners were groundless and that at no time had the minimum guarantees of due process for the alleged victims been violated. By virtue thereof, the State asked the Commission, pursuant to Article 47 of the American Convention, to declare the two petitions inadmissible.

4. After examining the positions of the parties, the Commission has concluded that it is competent to decide the claim submitted by the presumed victims, and that the case is admissible in light of Articles 46 and 47 of the American Convention. Consequently, the Commission has decided to notify the parties and to publish this report on admissibility, and to include it in its Annual Report.

II. PROCEEDINGS BEFORE THE COMMISSION

5. On August 9, 2001, the Commission received a petition presented by the International Service for Human Rights (ISHR) on behalf of Mr. Juan Santaella Telleria. The Commission recorded the petition under the number P-448/01. On September 24, 2001, the Commission acknowledged receipt of a petition submitted by Mr. Julio Cesar Leañez Sievert on his own behalf. The Commission recorded a petition under number 666/01. On October 1, 2001, the Commission received additional information, which it added to the file.

6. On February 11, 2002, the Commission transmitted to the State the pertinent portions of petition 448/01, giving it 2 months to present its response. The following March 7, the Commission transmitted to the State the pertinent portions of petition 666/01, and advised the State and the petitioners that the two petitions were being joined for processing.

7. On July 10 and 15, 2002, the Commission received the observations of the State with respect to the two files. On July 25, 2002, the Commission transmitted the information submitted by the State to the petitioners and gave them 30 days to submit their response. On October 20 and on November 6, 2002, the petitioners presented their observations on the State's response. On November 11, 2002, the Commission received the response of the State, which was transmitted to the petitioners on November 11, 2002.

8. On March 3, 2004, the Commission held a working meeting between the parties during its 119th regular session. On March 5, 2004, the Commission sent to the State a communication acknowledging receipt of a note submitted during the working meeting. On May 7, 2004, the State submitted additional observations, which were passed on to the petitioners on May 10. On April 26, 2004, the petitioners presented additional observations, which were transmitted to the State on April 17, 2004. On July 1, 2004, the petitioners again submitted information, which was transmitted to the State on the following day.

III. POSITION OF THE PARTIES

A. Position of the petitioners

9. The petitioners declare that on April 15, 1994, the Office of the Prosecutor General (Fiscalía General) ordered the opening of two summary criminal inquiries against various

directors of financial institutions, including Messrs. Julio Cesar Leañez Sievert and Juan Santaella Telleria. One inquiry was launched for alleged crimes under the Public Assets Protection Act, while the other had to do with alleged crimes against the General Banking Act. On June 24, 1994, the 26th Court of First Instance for Criminal Matters (hereafter “the 26th Criminal Court”) declared the inquiry closed on the grounds that it had revealed no crimes against the Protection of Public Assets Act. On June 30 that year, the 24th Court of First Instance in Criminal Matters (hereafter “the 24h Criminal Court”) decided to continue the investigation into alleged crimes against the Banking Act. On August 7, 1995, the Superior Court for the Protection of Public Assets reversed the ruling of the 26th Criminal Court and ordered continuation of the investigation into crimes against public assets. On November 23 of that year, the 24th Criminal Court ordered the two cases to be treated jointly.

10. On July 13, 1998, the public prosecutor (Ministerio Público) declined to prefer charges against Julio Cesar Leañez Sievert and Juan Santaella Telleria and asked the court to dismiss the case in part. The dismissal referred to the crimes of embezzlement of funds granted by a public agency and fraudulent approval of unlawful loans. On the other hand, the prosecutor laid charges against Messrs. Juan Santaella Telleria and Julio Cesar Leañez Sievert for fraudulent approval of loans to related companies, embezzlement of the funds of a financial institution, and unlawful financial intermediation (crimes established in the General Banking Act).

11. On September 22, 1998, the 24th Criminal Court dismissed the charges relating to embezzlement of funds granted by a public agency and the fraudulent approval of unlawful loans. The petitioners reported that, in its explanatory judgment of September 30, 1998, that same Court confirmed and expanded the content of its ruling.

12. The petitioners added that the public prosecutor did not appeal that decision and consequently must be presumed to have consented to it. Notwithstanding, according to the petitioners, the Criminal Prosecutions Code then in effect required a reference to a higher court with jurisdiction to hear the appeal. Consequently, the court of first instance ordered a referral to the Superior Court for the Protection of Public Assets. On April 21, 1999, that court upheld the ruling of first instance, which was final because it was not subject to any appeal, including the extraordinary recourse of cassation.

13. With respect to the crimes established by the Banking Act, on June 3, 1999, the 24th Criminal Court acquitted Messrs. Juan Santaella Telleria and Julio Cesar Leañez Sievert. The public prosecutor did not appeal that ruling. Under the rule of mandatory referral, the judgment was sent for review to the Fifth Chamber of the Court of Appeals of the Judicial Circuit of Metropolitan Caracas.

14. On July 1, 1999, while a decision on that referral was still pending, the Organic Code of Criminal Procedure came into force, replacing the Code of Criminal Prosecution. One of the procedural amendments was to eliminate mandatory referral when the parties to a proceeding declined to appeal. On August 9, 1999, the Chamber of Appeals, taking into account that legal amendment, declared final dismissal.[FN2]

[FN2] That judgment established that: "This chamber considers that, because there is no purpose to the referral and in light of the immediate application of section 509 of the Organic Code of Criminal Procedure to this case, there are no matters to decide, and consequently the decision issued by the 24th Criminal Court stands."

15. On October 20, 1999, the Attorney General (Procurador General) and the President of the Bank Deposit Guarantee and Protection Fund (FOGADE) submitted two appeals for constitutional protection (amparo) before the Supreme Court of Justice. Those appeals alleged that due process and the right of defense were violated by the judgment issued by the Superior Court of Protection on April 21, 1999, and by the judgment issued by the Fifth Chamber of Appeals on August 9, 1999, and requested that those judgments be nullified.

16. On October 25, 1999, the presumed victims presented a brief to the Chamber of Criminal Cassation of the Supreme Court as party to the amparo process. That brief argued that the plaintiffs lacked standing. On January 26, 2000, the Chamber of Criminal Cassation of the Supreme Court sent the amparo appeal to the Constitutional Chamber for consideration.

17. On April 2, 2001, the Constitutional Chamber of the Supreme Court of Justice, in its ruling on the amparo appeal, revoked the decisions of the Superior Court of Protection and the Court of Appeals. The Supreme Court was thereby ordering the Court of Appeals to reopen the case and to try the presumed victims again on the same charges. According to the petitioners, that decision violated their right not to be tried twice for the same offense, in that two non-appealable judgments were unlawfully modified, thereby violating the principle of res judicata established in Article 8.4 of the American Convention.

18. The Supreme Court held that in this case there was a legally ordered referral, equivalent to an appeal, which had not been decided. Citing previous case law, the court reiterated that referrals ordered before entry into force of the Organic Code of Criminal Procedure must continue to be pursued to a decision. Consequently, the Constitutional Chamber held that the decision of the Court of Appeals violated due process in declaring that there was no matter to decide in relation to a referral ordered in accordance with the law in force at that time. On the other hand, Constitutional Chamber found that:

With respect to the decision of the Superior Court for the Protection of Public Assets, which it is claimed failed to appreciate expert testimony, and having analyzed the contents of the decision and the evidence contained on the files, including expert testimony and other proof, this court must point out that they referred to the movement of the bank after it received financial assistance, which could involve crimes against public property. Consequently, the court considers that the right to due process has been violated and it therefore annuls the decision appealed, for which reason, given the relationship of the crimes investigated, it is the Fifth Chamber of the Court of Appeals of the Criminal Judicial Circuit of Metropolitan Caracas that will hear both cases, by virtue of the suppression of the Superior Court for Protection, and this court so declares.[FN3]

[FN3] Supreme Court of Justice, Constitutional Chamber, judgment of amparo of April 2, 2001, presiding magistrate: Ivan Rineon Uraneta.

19. According to the petitioners, the argument of the Supreme Court in extending the application of referral despite the legal amendment, constituted a violation of the principle of in dubio pro reo ("in doubt, decide for the defendant"). The petitioners argue that this decision applies to the defendants the procedure most unfavorable to them, something that is not permitted in criminal matters. Moreover, this extensive application violates rights acquired by the defendants, such as absolution of criminal responsibility, thereby violating the principle of res judicata.

20. The petitioners also complained that, with the decision of the Supreme Court, the Venezuelan State unjustifiably delayed the course of justice by setting the criminal proceedings back six years. The reopening of the case nearly three years after the presumed victims were acquitted constituted a violation of due process, by depriving them of legal security and diminishing their possibilities of defense.

21. The petitioners conclude that they have exhausted all instances and procedural remedies and have presented the petition within the time limit established by the Convention, and that the Commission should thus admit the petition and declare that the Venezuelan State violated the rights to due process, to freedom from ex post facto laws, and to judicial guaranties, and the right to be tried by a competent, independent and impartial court within a reasonable time, to the prejudice of Messrs. Julio Cesar Leañez Sievert and Juan Santaella Telleria.

B. Position of the State

22. The State argued that this case is still in the course of criminal proceedings, and that consequently the available domestic remedies have not been exhausted. On the hand, the State maintained that the violations alleged by the petitioners lack substance, because at no time did the State violate the minimum guaranties of due process for the presumed victims.

23. With respect to the ruling of the Supreme Court deciding the two appeals for amparo, the State maintained that this did not entail violations of the defendants' rights, because the ruling "is consistent with the legal control (nomofiláctica) function of the apex of our judiciary, and the protection of Venezuelan legal institutions and the government in annulling rulings that violate matters vital to public order".

24. The State admitted that, as the petitioners maintain, the Attorney General and FOGADE did not intervene formally in the criminal proceedings. Nevertheless, it argued that this should not be considered as contempt of those institutions, nor as an indication that they lacked legitimacy in seeking constitutional amparo. The State maintains that the Venezuelan system of criminal procedures, in cases where a victim is not a participant and has no active role, this does not prevent the victim from legitimately taking action by the extraordinary means of constitutional amparo against a court ruling (as did the Attorney General and FOGADE in the

case at hand, on behalf of the interests of the Republic and of FOGADE, and ultimately in the collective interests of our country), only in the case of violation of fundamental rights.

25. According to the State, alongside the principle of legal security, which is generated essentially by the stability of judicial decisions and the right of individuals not to be tried twice for the same offense, there is the right of the parties to intervene in a fair, transparent and equitable process, in which they are guaranteed access to justice, and the right to be heard, to intervene in the defense of their rights, and to obtain a timely and effective decision. Thus, on those decisions that have been obtained without respect for these rules there falls a simple apparent *res judicata* that may be the object of constitutional amparo to reestablish the juridical order.

26. The State argues that its participation in the judicial defense of the rights and interests of the Republic is not limited to appearing as plaintiff or defendant in proceedings, but extends also to intervening as a third party in any proceeding. As well, the judicial intervention of the Attorney General is not limited to civil or administrative contentious jurisdiction, for the Constitution and the law give it the task of protecting public assets. By virtue of these functions, the Attorney General acted legitimately to protect the public assets represented by the financial assistance granted by FOGADE and consequently to bring action for constitutional amparo against the judgment handed down by the Superior Court for Protection of Public Assets on April 21, 1999. From these considerations it is clear that such action did not violate *res judicata* nor did it seek to create a third instance, since the only thing the Attorney General did was to fulfill his constitutional mandate to protect the collective interests of all inhabitants of the Republic, in protecting public revenues and in ensuring that the courts render judgments of innocent or guilty in cases where public funds are mishandled.

27. As to the allegation of the petitioners referring to violation of the principle of *in dubio pro reo*, the State argued that this principle has to do with evidentiary rules and does not relate to the temporal application of the law. Thus, when the Supreme Court held that a referral should be made and examined in cases initiated under the former regime it did not violate that principle. Nor was there any violation of the principle of *non bis in idem* (double jeopardy), for criminal proceedings have never been opened against the same persons for the same offenses.

28. The State argued that the presumed victims were never prevented from acting in the process, a process that is expected to produce a judgment that will comply fully with due process and with the rules requiring a referral, which was mistakenly not conducted. That final decision it is still pending before the domestic courts: at this time a ruling by the Fifth Chamber of the Court of Appeals of Caracas is pending, for which reason domestic procedural remedies cannot be said to have been exhausted.

IV. ANALYSIS OF JURISDICTION AND ADMISSIBILITY

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

29. The petitioners are entitled by Article 44 of the American Convention to present complaints before the Commission. The petition names as the presumed victims Julio Cesar Leañez Sievert and Juan Santaella Telleria, with respect to whom Venezuela is committed to respect and guarantee the rights enshrined in the American Convention. The Commission notes that Venezuela has been a State Party to the American Convention since August 9, 1977, when it deposited its instrument of ratification. The Commission therefore has jurisdiction *ratione personae* to examine the petition.

30. The Commission has jurisdiction *ratione temporis* because the facts alleged in the petition were said to have occurred after the American Convention came into force for Venezuela.

31. The Commission has jurisdiction *ratione loci* to take cognizance of the petition, inasmuch as it alleges violations of rights protected under the American Convention said to have taken place within the territory of Venezuela, a State party to that treaty.

32. The Commission has jurisdiction *ratione materiae* because the petition complains of possible violations of human rights protected under the American Convention

B. Requirements of admissibility

1. Exhaustion of domestic remedies

33. As a requirement for admissibility, Article 46.1 of the American Convention requires that the remedies under domestic law have been pursued and exhausted. The petitioners argue that, after more than 11 years since criminal proceedings were begun against them and after more than five years since the decision of amparo issued by the Supreme Court of Justice, criminal proceedings against them have not terminated, for which reason they invoke the exception to the exhaustion of domestic remedies provided in Article 46(1)(d) of the American Convention. For its part, the State alleges the failure to exhaust domestic remedies, arguing that a decision by the Fifth Chamber of the Court of Appeals is pending. The State did not submit any argument to justify the time over which criminal proceedings have stretched.

34. The Convention provides for specific exceptions in cases where the exhaustion of domestic remedies is impracticable. One of those situations is that covered by Article 46(2)(c), i.e. unwarranted delay in rendering a decision on those remedies. An analysis of what constitutes a reasonable time for domestic remedies must consider the proceeding up to the time a final and firm judgment is delivered and, particularly in criminal matters, that time must cover the entire proceeding, including any appeals that may be filed.[FN4]

[FN4] I-A Court, "19 Merchants" case. Judgment of 5 July 2004. Series C No. 109, par. 189, citing I-A Court, Juan Humberto Sanchez. Judgment of 7 June 2003. Series C No. 99, par. 120; I-A Court, Hilaire, Constantine, Benjamin et al. Judgment of 21 June 2002. Series C No. 94; and I-A Court, Suarez Rosero. Judgment of 12 November 1997. Series C No. 35, par. 71

35. In the present case, the Commission finds that the criminal investigation was begun on April 15, 1994, with the opening of two summary criminal inquiries. Proceedings against the petitioners have dragged on, including the period in which the Constitutional amparo appeal was decided, for more than 11 years, and yet a final and firm decision has not been handed down determining the responsibility of the defendants. Although the State has the obligation to rectify the ill procedural performances, the Commission notices that from the decision of the Supreme Court it have passed more than four years without a decision has been adopted. Consequently the Commission finds that there has been unwarranted delay in the criminal proceeding, and that Article 46(2)(d) of the Convention is applicable. The Commission wishes to clarify, as it has done on previous occasions, that the exceptions of Article 46 of the Convention for determining admissibility do not imply any prejudgment as to the merits of the complaint. The criterion followed by the Commission in analyzing the petition during the admissibility stage is of a preliminary nature.

2. Timeliness of the petition

36. Article 46(1)(b) of the Convention provides that a petition must be lodged within a period of six months from the date on which the petitioners are notified of the final judgment exhausting domestic remedies. In the present case, the Commission has established that the exception of Article 46(2)(d) is applicable, and for that reason the requirement of Article 46(1)(b) is not applicable. Proceeding logically, the requirement to present the petition within six months must also be regarded as inapplicable, and the Commission must determine whether the petition was submitted within a reasonable time, pursuant to Article 32(2) of the rules of procedure. The petitioners presented their petitions on August 9 and on September 24, 2001, i.e. four months and five months after a decision of amparo nullifying the judgment that, according to the petitioners, declared their definitive acquittal. The State has presented no argument on this point. The Commission therefore considers that this case has been presented within a reasonable time.

3. Duplication of proceedings and res judicata

37. There is nothing in the file to indicate that the substance of the petition is pending in any other international proceeding for settlement, or that it is substantially the same as any petition previously studied by the Commission or other international body. Hence, the requirements set forth in Articles 46(1)(c) and Article 27(d) of the Convention have also been met.

4. Characterization of the facts alleged

38. Article 47(b) of the Convention requires the Commission to declare inadmissible any petition or communication submitted when it "does not state facts that tend to establish a violation of the rights guaranteed by this Convention". The petitioners allege that their rights were violated because they were tried twice for the same offense, and because proceedings against them did not take place within a reasonable time. The State argued that the interpretation of the Supreme Court Justice guarantees the rights of the parties to a fair trial, in which the petitioners were heard and obtained a timely and effective decision.

39. With respect to the first question, the petitioners argue that the appeal for amparo brought by the Comptroller General (Contraloría General) and FOGADE was a legal absurdity, because the appellants were persons external to the procedural relationship. The petitioners claim that criminal action in Venezuela is the preserve of the Prosecutor General (Fiscalía General de la Republica), and that the parties to the proceedings in both cases were the Prosecutor General and the defendants. Consequently, the appellants for amparo could not have been victims of violations of their procedural guarantees in a proceeding in which they were not involved.

40. On this point, the Commission considers that the facts presented by the petitioners do not constitute facts tending to characterize a violation of Article 8(4) and Article 9 of the American Convention. The Commission has repeatedly held that, while it has authority to examine alleged irregularities in domestic judicial procedures that give rise to clear violations of due process or of some right protected by the American Convention, it will not examine domestic judicial decisions if the complaint merely alleges that they were mistaken or unfair. In such cases the petition must be rejected, in accordance with the "fourth instance" formula.[FN5] The Commission has the duty to ensure observance of the obligations assumed by States party to the American Convention. However, it cannot act as a court of fourth instance to examine presumed errors of fact or of law that domestic courts may have committed when acting within their jurisdiction.[FN6]

[FN5] See, for example, IACHR Annual Report 1998, Report 87/98, Vila-Masot (Venezuela), par. 15, and IACHR Annual Report 1996, Report 39/96, Case 11.673, Marzioni (Argentina), par. 50.

[FN6] IACHR, Annual Report 1996, Marzioni, above note 9, par. 57. See also IACHR Annual Report 1990-91, Report 74/90, Case 9850, Lopez Aurelli, Argentina, par. 20 (with examples of distinctions between complaints understood to violate due process and those prevented from consideration by the "fourth instance" formula).

41. In the case at hand, the Commission notes that the petitioners' complaint with respect to Article 8(4) of the Convention is that the decision of the Supreme Court of Justice created a "third instance" of criminal investigation that overturned an acquittal in their favor. After examining the file, the Commission finds that the decision of the Supreme Court resolved highly complex domestic legal questions with respect to application of criminal procedure law at that time. That decision followed the tradition of jurisprudence established by the court itself and arrived at the conclusion that the decision of the lower court was not consistent with legislation and, consequently, it ordered substitution of the lower-ranking decision within the same judicial process. In this respect, the Commission concludes from the nature of the complaints and the evidence available that the petitioners' complaints with respect to violations of due process raise questions of domestic law rather than any failure of the State to observe the guarantees of the American Convention or other applicable instruments. Consequently, the Commission will not examine the alleged violations of Articles 8.4, 9 and 25 of the American Convention.

42. On the other hand, the petitioners alleged violation of the guarantee of a reasonable time for judicial proceedings, contained in Article 8(1) of the American Convention. On this question,

the Commission considers that the allegations presented by the petitioners raise questions that, prima facie, could characterize violations of Article 8(1). Consequently, the IACHR concludes that on this point the case is admissible, pursuant to Article 47(b).

VI. CONCLUSION

43. By virtue of the arguments of fact and of law set forth above, the Commission concludes that the case at hand fulfills the requirements of admissibility established in Article 46 of the American Convention and, without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare admissible those portions of the petition relating to Articles 1(1) and 8(1) of the American Convention.
2. To declare inadmissible those portions of the petition relating to Articles 8(4), 9 and 25 of the American Convention
3. To transmit this report to the State and to the petitioners.
4. To continue its examination of the merits of the case.
5. To publish this decision and to 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 Washington, D.C., on the 12 day of October 2005. (Signed): Clare K. Roberts, President; Susana Villarán, First Vice-President; Paulo Sérgio Pinheiro, Second Vice-President; Commissioners Evelio Fernández Arévalos, José Zalaquett, and Florentín Meléndez.