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Institution:	Inter-American Commission on Human Rights
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Session:	Hundred Twenty-Third Regular Session (11 – 28 October 2005)
Title/Style of Cause:	Gustavo Adolfo Flamerich Ramella 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 deliberations or vote on this report, pursuant to Article 17(2)(a) of the Commission's Rules of Procedure.
Dated:	24 October 2005
Citation:	Flamerich Ramella v. Venezuela, Petition 12.060, Inter-Am. C.H.R., Report No. 88/05, OEA/Ser.L/V/II.124, doc. 5 (2005)
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## I. SUMMARY

1. On October 10 1998, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition submitted by Mr. Gustavo Adolfo Flamerich Ramella (hereinafter “petitioner” or “the alleged victim”) in which he alleges the responsibility of the Bolivarian Republic of Venezuela (hereinafter “the State” or “the Venezuelan State”) due to the alleged violation of his labor rights.
2. The alleged victim indicated that in 1982 he entered a contract with the Instituto Autónomo Aeropuerto Internacional de Maiquetía that was rescinded in September 1983. He indicated that in the labor dispute it was recognized that he was owed a debt for professional fees not paid at the time when the termination of the contract was signed. The petitioner alleged that the Venezuelan State violated his labor rights given that the First Court for Contentious-Administrative Matters, in July 1990, ordered the Instituto Autónomo Aeropuerto Internacional de Maiquetía to pay him the sum of money owned, yet it failed to order payment of the monetary adjustment. In addition, the alleged victim argued that the State engaged in unjustified procedural delays after having appealed this judgment to the Supreme Court of Justice, but not until 1998, declaring the lapsing of the lawsuit due to inactivity (*la perención de la instancia*). The alleged victim indicated that he had exhausted domestic remedies.

3. In response, the Venezuelan State argued that the petitioner had available to him all domestic judicial remedies, and that the petitioner’s complaint was manifestly groundless, since

it expressed disagreement with the factual and legal grounds of the judgment handed down by the First Court for Contentious-Administrative Matters and the Supreme Court of Justice. Accordingly, it argued that the petitioner sought to have the IACtHR operate as a fourth instance of review. Based on these considerations, the State asked the Commission to find the petition inadmissible pursuant to Article 47(b) and (c) of the American Convention.

4. After analyzing the parties' position, the Commission concluded that it was competent to decide on the claim submitted by the alleged victim, and that the case is inadmissible in light of Articles 46 and 47 of the American Convention. Accordingly, the Commission decided to notify the parties and make public this inadmissibility report, and include it in its Annual Report.

## II. PROCESSING BEFORE THE COMMISSION

5. On October 10, 1998, the Commission received a petition submitted by Mr. Gustavo Adolfo Flamerich Ramella for the alleged violation by the State of his economic rights.

6. On November 13, 1998, the Commission acknowledged receipt of the petition, which was assigned number 12,060. That same day, the IACtHR forwarded the pertinent parts of the petition to the Venezuelan State, and asked it to submit its observations.

7. On February 18, 1999, the Commission received additional information from the petitioner, which was transmitted to the State on March 1, 1999.

8. On August 16, 1999, the IACtHR reiterated the request for information to the State. On August 23, 1999, the State requested a 30-day extension, which was granted on September 28, 1999.

9. By note of September 29, 1999, the Venezuelan State submitted its observations to the IACtHR. On October 6, 1999, the Commission forwarded this information to the petitioner, giving him 30 days to submit his observations.

10. On October 9, 1999, the petitioner requested a 30-day extension, which was granted.

11. On January 21, 2000, the IACtHR received a second response from the State, which was forwarded to the petitioner on March 15, 2000.

12. On May 8, 2000, the Commission received a note from the petitioner, which was forwarded to the State on June 19, 2000.

13. On September 8, 2000, the IACtHR received a third response from the State. On October 30, 2000, the petitioner submitted his observations, which were transmitted to the State on December 5, 2000.

14. On January 26, 2001, the IACtHR received a fourth response from the State, which was forwarded to the petitioner on February 12, 2001.

15. On April 24, 2001, the IACtHR received a response from the petitioner, which was forwarded to the State on April 30, 2001.

### III. THE PARTIES' POSITIONS

#### A. The petitioner's position

16. The petitioner indicated that his complaint arose from a labor relationship that lasted from 1982 to 1983 between himself and the Instituto Autónomo Aeropuerto Internacional de Maiquetía. He had been hired to inspect the construction of remote platforms, and the parking of the planes that would arrive at the National Terminal.

17. It was indicated that his contract entered into force on March 10, 1982, and continued until September 19, 1983, when the Instituto Autónomo Aeropuerto Internacional de Maiquetía ordered that the construction be halted due to budgetary shortfalls. On that same date, the petitioner signed a document with the Instituto in which the contract was rescinded and recognizing a debt to him for his professional fees. It was indicated that this recognition did not appear in that document for administrative reasons, resulting in the amount owed not actually being paid.

18. He indicated that given the situation described above, on July 28, 1986, he filed a writ of amparo before the First Court for Contentious-Administrative Matters, which was rejected; it was noted that the amparo was not the adequate means of collecting the debt, but that instead the petitioner should set in motion judicial actions for collecting bolivars.

19. Given this judgment, the petitioner on June 2, 1987 brought an action against the Instituto Autónomo Aeropuerto Internacional de Maiquetía before the First Court for Contentious-Administrative Matters. On July 4, 1990, the First Court for Contentious-Administrative Matters handed down a final judgment ordering the Instituto Autónomo Aeropuerto Internacional de Maiquetía to pay the money owned the petitioner, but it did not order it to pay the monetary adjustment.

20. On that basis, the petitioner appealed the judgment to the Political-Administrative Chamber of the Supreme Court of Justice. The petitioner alleged that the Supreme Court, on deciding the lawsuit had lapsed due to inactivity on April 29, 1998, acted with unwarranted delays, entailing for example the disqualification of principal judges, the hospitalization of one of the judges, and the late constitution of the Ad Hoc Chamber.

21. He argues that as he was not granted the indexing of the amounts ordered to be paid by the Instituto Autónomo Aeropuerto Internacional de Maiquetía, he was caused economic harm, which is aggravated by the procedural delay on the part of the Venezuelan courts in reaching a decision on the case. In addition, he argued that the State failed in its obligation to ensure to every person the principle of progressivity without any discrimination, established in Article 19 of the Constitution of the Bolivarian Republic of Venezuela.[FN2]

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[FN2] Constitution of the Bolivarian Republic of Venezuela: Title III, ON DUTIES, HUMAN RIGHTS, AND GUARANTEES, Chapter I: General Provisions. Gaceta Oficial No. 36,860, December 30, 1999. Article 19 provides:

Article 19. The State shall guarantee to every individual, in accordance with the progressive principle and without discrimination of any kind, the use, inalienable, indivisible and interdependent enjoyment and exercise of human rights. Respect for and the guaranteeing of these rights is obligatory for the organs of Public Power, in accordance with the Constitution, the human rights treaties signed and ratified by the Republic and any laws developing the same.

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22. As for the formal admissibility requirements, the petitioner alleges having exhausted all domestic remedies.

B. The State's position

23. In its responses the State indicated that the petitioner did not allege a specific violation of any of the provisions of the American Convention, limiting himself to the allegation of procedural delay by the Venezuelan courts. As regards admissibility, the State noted that the petition should be declared inadmissible because the petitioner did not present facts that tended to characterize a violation of the rights guaranteed in the American Convention. It added that the petition is manifestly groundless and that the petitioner was trying to use the Inter-American Commission as a fourth judicial instance. It indicated that pursuant to the judgment handed down by the First Court for Contentious-Administrative Matters, the petitioner brought an action to collect bolivars against the Instituto Autónomo Aeropuerto Internacional de Maiquetía to collect the amount owed to him.

24. The State argues that this complaint was duly processed by the First Court and that, after an arduous contentious process between the parties in which both argued their rights and their objections as they saw fit for their best defense, that court handed down a judgment finding the action admissible, and ordering the Instituto Autónomo Aeropuerto Internacional de Maiquetía to pay the amount owed, and dismissing the request to apply indexing to the amounts sought in the action, using as the standard the prevailing case-law in the Venezuelan courts as of 1990. In response to the argument of procedural delay by the Venezuelan courts, the State set out a timeline of the remedies pursued, which are summarized as follows, indicating the existence of a failure by the petitioner to take procedural initiative, which finally resulted in the judgment of the Supreme Court of Justice declaring the actions to have lapsed due to inactivity. The State listed:

That on September 24 and 27, 1990, the petitioner filed a motion for appeal.

That on October 1, 1990, the Instituto's attorney joined the appellant in the appeal.

That by act of May 14, 1991, the First Court for Contentious-Administrative Matters freely heard the appeal filed.

That on July 30, 1992, the First Court denied a request to join the proceedings, made by the attorney for the Instituto Autónomo.

That on November 4, 1993, the petitioner filed a motion requesting that the matter be forwarded to the Supreme Court of Justice.

That on April 29, 1998, the Political-Administrative Chamber of the Supreme Court of Justice handed down a judgment declaring the action to have lapsed due to inactivity since more than one year had gone by from when the appeal was heard to the date on which the appellant took the procedural initiative to have the case sent to the appellate court; that decision fits within the settled and repeated case-law of the Venezuelan courts in this area.

25. In view of the foregoing, the State concluded that there was no procedural delay, given that the case before the First Court for Contentious-Administrative Matters was characterized by an ongoing dispute between the judicial representatives of both parties, to best defend their rights and interests. It also indicated that many objections were raised and that they resulted in the normal duration of any extensively-debated contentious matter. In addition, it noted that the petitioner's representative did not intervene in the proceeding, not giving impetus to the appeal, which was duly admitted, until November 4, 1993, i.e. three years after the appeal filed by them on September 24 and 27, 1990, and more than one year after the First Court heard the appeal on May 14, 1991. The State indicated that the Code of Civil Procedure sanctions inactivity by the parties by establishing the lapsing of all those cases in which more than one year goes by without procedural impetus.[FN3]

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[FN3] Code of Civil Procedure, Chapter IV: On Lapsing of Actions due to Inactivity

Article 267: Every action extinguishes by the passing of one year without the parties executing any procedural act. The inactivity of the Judge after a hearing in the case shall not produce the lapsing of the action.

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26. The State argues that putting the IACtHR in the position of reviewing how the domestic courts interpret and apply the rules of law would mean that the IACtHR would be acting as a court of fourth instance, which it is not allowed to do, according to the case-law of the inter-American system. The State argues that the petitioner enjoyed his right to an impartial and speedy judicial proceeding that afforded him the possibility of a favorable result, ordering the payment of the sums sought in the action, but not their indexing, which was considered unfounded. To this end, the State argued that at that time the Venezuelan economy was not facing an inflationary process so as to justify it, and for that reason the judicial decisions did not grant any monetary correction at that time, in 1990. With respect to the petitioner's argument invoking Article 19 of the Venezuelan Constitution, the State indicated that it does not apply, as that provision entered into force after the judgment was handed down by the Political-Administrative Chamber of the Supreme Court of Justice.

27. Finally, the State indicated that the action to collect bolivars filed by the petitioner against the Instituto Autónomo Aeropuerto Internacional de Maiquetía was admitted, substantiated, and decided in keeping with the law, complying with the rules of due process, safeguarding the right to defense. Accordingly, the State asks the IACtHR to declare the petition

inadmissible, as the facts alleged do not characterize a violation of his rights, and so the complaint is manifestly groundless.

#### IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

##### A. Competence of the Commission ratione materiae, ratione personae, ratione temporis, and ratione loci

28. The petitioner is authorized, in principle, by Article 44 of the American Convention to submit complaints to the IACtHR. The petition identifies the alleged victim as an individual with respect to whom the State of Venezuela undertook to respect and ensures the rights enshrined in the American Convention. As regards the State, 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. Accordingly, the Commission is competent ratione personae to examine the petition.

29. The Commission is competent ratione loci to take cognizance of the petition, insofar as it alleges violations of rights protected in the American Convention in the territory of a state party to that treaty. The IACtHR is competent ratione temporis insofar as the obligation to respect and ensure the rights protected in the American Convention had already entered into force for the State on the date when the facts stated in the petition are alleged to have occurred. Finally, the Commission is competent ratione materiae because the petition alleges violations of human rights protected by the American Convention.

##### B. Admissibility requirements

30. In this matter, there is no dispute between the parties as to compliance with the requirement set forth in Article 46(1)(a) of the American Convention and Article 37 of the Commission's Rules of Procedure. The State and the petitioner agree that the domestic remedies available were exhausted with the decision of April 29, 1998, by the Supreme Court of Justice. The petition was received October 10, 1998, i.e. within the six-month period established in Article 46(1)(b) of the American Convention. The subject matter of the petition is not pending before any other procedure for international settlement, and the information required by Article 46(1)(d) has been provided by the petitioners. The State has not raised any objection arguing that the formal admissibility requirements have not been met in the instant case.

##### Characterization of the facts alleged

31. Article 47 of the American Convention explicitly sets forth the grounds for declaring the inadmissibility of the petitions submitted to the Commission. Article 47(b) specifically provides that any petition that "does not state facts that tend to establish a violation of the rights guaranteed by this Convention" must be considered inadmissible. The petitioner alleges that the interpretation and application of the domestic legislation was arbitrary and delayed, as he was not awarded the indexing of an amount owed. For its part, the State indicated that the First Court for Contentious-Administrative Matters analyzed all the arguments on the merits of the case, resulting in a decision partially favorable to the petitioner; and that the rejection of the monetary adjustment was grounded in the case-law of the domestic courts of Venezuela at the time of the

dispute. With respect to the lapsing of the action due to inactivity, the State argued that it occurred due to the lack of procedural activity by the petitioner himself. The IACtHR cannot, in principle, examine the judgments handed down by the local courts when they have acted within their jurisdiction and afforded the proper judicial guarantees, unless it considers that there has been a possible violation of the American Convention.[FN4]

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[FN4] See, for example, IACtHR, Annual Report 1998, Report 87/98, Case 11,216, Vila-Masot (Venezuela), para. 15; and IACtHR, Annual Report 1996, Report 39/96, Case 11,673, Marzoni (Argentina), para. 50.

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32. After examining the record, the Commission concludes that as regards the alleged arbitrariness of the State when it paid the compensation without indexing the amount owed, the petitioner did not prove that the domestic case-law applied at the time was at odds with the American Convention. In other words, the petitioner did not prove that the compensation paid lacked sufficient economic value to constitute fair compensation.

33. In this regard, the petitioner's mere disagreement with the prevailing case-law standard does not suffice to characterize a violation of the American Convention. It would be different if the petitioner had alleged and proven that, due to existing inflation and the failure to index for it, the compensation received completely lacked economic value.

34. As regards the judicial delay alleged, one should take as a point of reference the three elements which, according to the case-law of the European Court of Human Rights and the Inter-American Court of Human Rights, allow one to state whether the time that elapsed was reasonable: (i) the complexity of the case; (ii) the procedural activity of the interested persons; and (iii) the conduct of the judicial authorities.[FN5] On this point, the State alleged and proved that the action was determined to have lapsed due to inactivity due to the lack of procedural impetus on the part of the petitioner. In civil proceedings like the subject matter of this complaint, in which the procedural impetus of the moving party is essential, the negligence of the moving party cannot give rise to the international responsibility of the State. The activity of the petitioner was determinant in the judicial delay, accordingly, it is not possible for that delay to constitute a violation of the Convention.

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[FN5] Eur. Court H.R., Motta judgment of 19 February 1991, Series A no. 195-A, para. 30; Eur. Court H.R., Ruiz Mateos v. Spain, judgment of 23 June 1993, Series A No. 262, I/A Court H.R., Genie Lacayo Case, Judgment of January 29, 1997, Series C No. 30, paras. 77-81, I/A Court H.R., Suárez Rosero Case, Judgment of November 12, 1997, Series C No. 35, para. 72.

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35. In view of the foregoing, the IACtHR concludes that the complaint filed by the petitioner does not set forth facts that tend to establish violations of the rights enshrined in the American Convention; accordingly, the petition must be found inadmissible, under Article 47(b) of the American Convention.

## V. CONCLUSIONS

36. Based on the arguments of the parties and the foregoing analysis of the requirements to admit petitions, the Commission concludes that the petition does not describe facts which, if proven, could constitute a violation of any of the rights protected in the American Convention or any other applicable instrument. Accordingly, the petition is inadmissible, pursuant to Article 47(b) of the American Convention.

37. Based on the foregoing arguments of fact and law,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To find this petition inadmissible.
2. To notify the parties of this decision.
3. To publish this decision and include it in its Annual Report for the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., October 24, 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.