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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 84/05; Petition 432/03
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Title/Style of Cause: Luis Raul Pinot Armijo v. Honduras
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, Freddy Gutierrez, Florentin Melendez.
Dated: 24 October 2005
Citation: Pinot Armijo v. Honduras, Petition 432/03, Inter-Am. C.H.R., Report No. 84/05, OEA/Ser.L/V/II.124, doc. 5 (2005)
Represented by: APPLICANT: Teresa Damaris Sierra
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I. SUMMARY

1. On June 14, 2003, Mrs. Teresa Damaris Sierra (hereinafter “the petitioner”) lodged a petition with the Inter-American Commission on Human Rights (hereinafter “the Commission”), in which she alleges that the State of Honduras (hereinafter “Honduras” or “the State”) is responsible for violating the rights of Mr. Luis Raúl Pinot Armijo (hereinafter “the alleged victim”) protected by the following articles of the American Convention on Human Rights (hereinafter “the Convention”): Art. 24 (right to equal protection); Art. 25 (right to judicial protection); Art. 1 (obligation to respect rights); and, Art. 2 (duty to adopt domestic legal measures). In addition, the petitioner alleges violation of Article 18 (protection of the handicapped) of the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights, “Protocol of San Salvador” (hereinafter “Additional Protocol”).

2. The petitioner alleges that on May 28, 2002, the alleged victim filed a request for exequatur with the Civil Chamber of the Supreme Court of Honduras, to obtain permission to practice the profession of public notary, and that the alleged victim was disqualified from practicing as a notary due to the fact that he is visually handicapped. In this regard, the petitioner contends that since the alleged victim is an attorney, he is being denied the opportunity to be a notary solely on the basis of his disability. Consequently, she considers that this is a case of discrimination in violation of the victim’s rights and that the State has no procedural recourse that would enable him to challenge the position taken by the Chamber of the Supreme Court of Justice in charge of petitions for the office of notary.

3. The State responds that the condition of visual disability of the alleged victim is a serious physical impediment that prevents him from witnessing, authenticating, and attesting to all the documents presented to notaries in their work, and hence from guaranteeing to the citizenry the legal security and confidence that such persons, who are granted such legal authority by the State, should inspire.

4. In this report, the Commission examines the available information in the light of the American Convention and concludes that the petitioners have not lodged their petition within the time period stipulated in Article 46(1)(b). In view of the fact that the petition does not meet the requirements set forth in Articles 46 and 47 of the American Convention the Commission decides to declare the petition inadmissible. The Commission further resolves to publish this report in the Annual Report to the OAS General Assembly and to notify both parties.

II. PROCEDURES OF THE INTER-AMERICAN COMMISSION

5. The Commission received the petition on June 20, 2003, and assigned it number 432/03. On July 31, 2003, the information was forwarded to the State, which was given a period of two months to respond. Honduras requested an extension of 30 days on September 30, 2003, which was granted. The State sent its response on November 5, 2003, and it was forwarded to the petitioner. The petitioner's observations were received on March 3, 2004, and forwarded to the State on March 29, 2004. The State sent its observations on April 27, 2004. On June 14 and 22, 2004, the petitioner submitted additional information, which was transmitted to the State on June 22, 2004. On July 22, 2004, additional information from the State was received and forwarded to the petitioner on September 8, 2004. On November 11, 2004, the petitioner sent further information, which was transmitted to the State on November 24, 2004. Honduras responded to it on December 21, 2004. Both parties subsequently submitted additional information which was forwarded to the other parties.

III. POSITIONS OF THE PARTIES

A. The Petitioners

6. The petitioner relates that on May 28, 2002, Luis Raúl Pinot Armijo, an attorney and a visually handicapped person, filed a request for authorization to practice as a public notary with the civil chamber of the Supreme Court of Honduras, the judicial entity responsible for granting notary licenses.

7. She maintains that the alleged victim submitted all the necessary documents of accreditation as an attorney, with a degree from the Universidad Nacional Autónoma de Honduras, and proof that he was of legal age and Honduran nationality, in accordance with the birth certificate granted by the National Registry of Persons.

8. The petitioner argues that all of this information was submitted in accordance with Article 313, Atribución [qualification] 6, of Decree N° 262-2000, ratified by Decree Number 38-2001, which revised Chapter XII, Title V of the Constitution of the Republic, and states: "The

Supreme Court of Justice shall authorize persons who have received their license as attorneys to practice the profession of notary.”

9. She further contends that these documents were submitted in accordance with Articles 4 and 5 of the Law on the Profession of Notary, which establishes the following requirements to practice the profession of notary: 1. Be an attorney, or have acquired the license of notary, pursuant to the law; 2. Be over twenty-one years of age and a Honduran citizen exercising his rights and secular status; and 3. Have obtained the corresponding exequatur from the Supreme Court of Justice, and taken the constitutional oath.

10. The petitioner goes on to state that, to obtain the exequatur, Article 5 of that law requires the interested party to file a request in writing to the Supreme Court of Justice, along with the documents in support of the requirements referred to in the previous article, and establishes that the Court, on the basis of those documents and prior information from three qualified witnesses of good reputation who shall attest to the conduct and morals of the petitioner, shall decide accordingly and, if appropriate, order the entry in the Register of Notaries, which shall be maintained in the Secretariat of that Court.

11. On the basis of these provisions, the petitioner contends that the alleged victim submitted the information of three witnesses, who, in turn, are attorneys, namely: Nelson Martín Reyes Morales, Doris Argelia Arévalo Sierra, and Nolvía Marina Escobar Pagoaga.

12. The petitioner argues that on August 1, 2002, the civil chamber of the Supreme Court of Justice issued a final decision in which it denied the exequatur filed by Luis Pinot Armijo, on the basis of the grounds that the visual handicap of the alleged victim disqualifies him from correctly performing the duties of notary.

13. The petitioner maintains that the legal grounds presented by the State, such as Article 78, 3rd Atribución, of the Law on the Organization and Functions of the Courts, and a series of articles from the Law on the Profession of Notary, do not establish that sight or visual capacity is an essential requirement to attest to a document or a contract.

14. The petitioner further argues that oral instructions do not require the sense of sight, and that instructions in writing can be read out by means of a reader, which can be a person or a specialized machine.

15. She further holds that Article 33 of the Law on the Profession of Notary establishes that notaries are to advise grantors of a public instrument of their right to read said instrument on their own and aloud before signing it, with the consequent mutual consent.

16. The petitioner also alleges that the alleged victim practiced the profession of notary from May 1998 to January 2003, with the formal register of public notary “kindly loaned” to him, and that he provided these professional services to a series of natural persons and legal entities.

17. She further argues that the alleged victim was convicted without first being heard, in violation of his right of defense protected in Articles 59 and 60 of the Honduran Constitution,

that the State declares any form of discrimination punishable, and that in this case, the rights of the alleged victim were not protected, despite the discriminatory action of the Supreme Court.

18. She also states that the State is required by Article 169 of the Honduran Constitution to sustain and promote the education of the handicapped, and that technological advances permit this obligation to be fulfilled in this case, since there is a series of machines that enables the blind to learn information existing in written form.

19. The petitioner also points out that the Law of Habilitation and Rehabilitation of handicapped persons guarantees the exercise of their rights, and that Article 321 of the Criminal Code punishes anyone who discriminates against persons by reason of their disability, among other causes.

B. The State

20. The State for its part reports that since the constitutional reforms, the Supreme Court is divided into four chambers, one of which is the Civil Chamber, which is in charge of processing and examining exequatur petitions presented for the practice of notary.

21. It indicates that in the event that the Civil Chamber decides unanimously, such decision is considered as having been issued on behalf of the Supreme Court of Justice.

22. It further states that the Supreme Court is responsible for regulating the necessary qualifications for the exequatur of notary, in order to guarantee to the citizenry the legal security of professionals invested as notaries, to whom it grants the legal authority to authenticate documents.

23. Furthermore, the State affirms that on August 1, 2002, the Civil Chamber of the Supreme Court, in a unanimous decision, denied the request for authorization to practice as notary filed by Mr. Pinot Armijo.

24. It further states that said Chamber issued the decision on the basis of Articles 78, Atribución 3, of the Law on Organization and Qualification of the Courts and Articles 1, 3, 6, 8, 9, 10, 19, 32, 33, 36, 49, 55 and 62 of the Law on the Profession of Notary.

25. It goes on to assert that, based on these legal provisions, Mr. Pinot Armijo is unable to practice as a notary, because he could not correctly perform notarial functions due to his blindness. The State contends that the alleged victim could not witness and see for himself the documents and contracts that might be submitted to him, in addition to the various facts and circumstances that persons authorized to authenticate documents are expected to establish as a perpetual record in the notarized documents.

26. It adds that since he cannot read for himself, he cannot assess the relevant aspects of the corresponding documents, and that this would run counter to the legal security required in this matter.

27. The State also bases its position on the fact that the profession of notary is undelegable and that this profession per se is an institution that guarantees security and perpetual records of official documents, contracts, and the like, and that these are delicate functions that notaries must ensure are certain and irrefutable. This is why they are required to read what they are authorizing and to attest to the signatures of the parties. In addition, the State asserts that Mr. Pinot Armijo would require the assistance of other persons whom he would have to trust for authentication, and that they are not authorized to perform such functions.

28. Finally, with regard to the notarial functions performed by Mr. Pinot Armijo, the State points out that these acts are violations of Honduran criminal law, since one cannot “lend” notarial functions. Consequently, they should not be considered as arguments in favor of the alleged victim.

IV. ANALYSIS

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

29. The petitioner is authorized by Article 44 of the American Convention to lodge petitions with the IACHR. The petition states that the alleged victim is an individual in respect of whom the Honduran State undertook the obligation to respect and guarantee the rights enshrined in the American Convention. As regards the State, the Commission notes that Honduras has been a party to the American Convention since September 5, 1977, the date on which it deposited the corresponding instrument of ratification. Consequently, the Commission has personal jurisdiction to consider the petition.

30. The Commission has jurisdiction of place to take cognizance of the petition, because the alleged violations of the rights protected by the American Convention took place within the territory of a state party to that instrument in this case the State of Honduras. The Inter-American Commission has jurisdiction *ratione temporis*, because the obligation to respect and guarantee the rights protected by the American Convention was already in force for the State on the date on which the acts alleged in the petition occurred. Finally, the Commission has subject matter jurisdiction, since the petition reports violations of the human rights protected by the American Convention.

B. Other requirements for admissibility of a petition\

1. Exhaustion of domestic remedies

31. Article 46(1)(a) of the American Convention states that admissibility of a petition lodged with the Commission is subject to the requirement “that the remedies under domestic law have been pursued and exhausted, in accordance with generally recognized principles of international law.” Article 46(2) of the Convention establishes three situations in which the rule of exhaustion of domestic remedies does not apply: 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.

32. In the case in point, the decision opposed by the petitioner as a violation of the rights of the alleged victim was issued by the Supreme Court of Justice of Honduras on August 1, 2002. All remedies under domestic law can therefore be considered as exhausted, since there is no higher jurisdiction to which a decision such as this one can be appealed.

33. The Honduran States has not questioned exhaustion of domestic remedies by the petitioner, hence it is assumed that there are no possible jurisdictional levels above the Supreme Court.

34. Consequently, the Commission considers that, in view of exhaustion of domestic remedies, it must decide at this time on admissibility of the petition, on the basis of the arguments submitted by the parties.

2. Deadline for presentation

35. Article 46(1)(b) of the American Convention stipulates that in order for a petition to be admissible, it must be “lodged with a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment.”

36. In view of the fact that the petition was lodged with the Commission on June 20, 2003, that the petition was drafted on June 14, 2003, and that the Supreme Court decision was dated August 1, 2002, the Commission notes that the petition was lodged after the period of six months established in the Convention had lapsed. Consequently, it is of the view that the petition was filed after the statutory time limit had past. The Commission considers that even taking into account, in favor of the petition, the possible date of notification of October 15, 2002, the date that the alleged victim establishes as the effective date of notification, the petition was still presented after the deadline established in the American Convention.

37. The Commission believes that there is no reason whatsoever in this case that would allow it to deviate from the clear text of the American Convention regarding the deadline for presentation of the petition.

V. CONCLUSION

38. On the basis of the aforesaid factual and legal arguments, the Commission considers that the petition is inadmissible, in accordance with the requirements established in Article 47(a) of the American Convention on Human Rights, since it is not in compliance with the period of time established in Article 46(1)(b).

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present petition inadmissible.
2. To notify the parties and the State of this decision.
3. To publish this decision 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 24th 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, Freddy Gutiérrez, and Florentín Meléndez.