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Session:	Hundred Twenty-Third Regular Session (11 – 28 October 2005)
Title/Style of Cause:	Efraín Ramírez Echeverría and Amílcar Mario Acosta Luna v. Ecuador
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:	Ramirez Echeverria v. Ecuador, Petition 12.169, Inter-Am. C.H.R., Report No. 82/05, OEA/Ser.L/V/II.124, doc. 5 (2005)
Represented by:	APPLICANT: Patricio Romero Barberis
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I. SUMMARY

1. On February 26, 1999, the Inter-American Commission on Human Rights (“the IACHR” or “the Commission”) received a petition from Patricio Romero Barberis (hereinafter “the Petitioner”) on behalf of Efraín Ramírez Echeverría and Amílcar Mario Acosta Luna. The petition denounced that the Republic of Ecuador (hereinafter “Ecuador”, “the Ecuadorian State” or “the State”) had violated their right to a fair trial, enshrined in Article 8 of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”). The reported violations relate to the irregular dismissal and subsequent reinstatement of the two alleged victims in the Ecuadorian National Police, amounting to them being deprived from the right of promotion according to their seniority within such institution.

2. With respect to the admissibility of the complaint, the Petitioner claims that they have exhausted domestic remedies with the decisions of the Constitutional Tribunal, which have not, furthermore, been duly complied with.

3. The State in turn claims that none of the rights enshrined in the American Convention were violated and that the petition is inadmissible under the terms of the “Fourth Instance” formula, which establishes that the Commission cannot take the place of a court of appeal by examining alleged errors of law or of fact which might have been committed by national courts acting within their areas of competence.

4. In this report, the Commission examines the information presented pursuant to the American Convention and finds that the petition does not meet the admissibility requirements

established in Article 46 of that Convention. Specifically, the Commission finds that the petition does not present evidence to support the claim that the facts alleged tend to establish a violation of the American Convention. Therefore, pursuant to Article 47(b) of the American Convention, the Commission decides to declare the petition inadmissible, to notify the parties of its decision, and to include this report in its Annual Report.

II. PROCESSING BY THE COMMISSION

5. The Commission received the complaint on February 26, 1999, assigned it No. 12.169, and conveyed its relevant parts to the Ecuadorian State on September 14, 1999, requesting its comments within 90 days from that date.

6. In a communication of January 4, 2000, received by the IACHR on January 10, 2000, the State provided the Commission with copies of some relevant judicial decisions without, however, commenting the Petitioner's allegations. The Commission reiterated its request for comments to the State on March 29, 2000.

7. On a communication of April 4, 2000, received by the Commission on April 6, 2000, the State filed its observations regarding the initial petition. Such written response was conveyed to the Petitioner for his comments on June 1st, 2000.

8. On June 2nd, 2000, the Petitioner addressed the Commission in respect to the delays of the State's replies, which was forward to the State on August 30, 2000.

9. On a note dated July 11, 2000, the Petitioner requested an extension of the period to provide additional information, which was extended in 60 days. On August 30, 2000, the Petitioner filed his information. Such information was then forwarded to the State on February 26, 2001.

10. In the meanwhile, on January 24, 2001, the State retransmitted its previous commentaries to the Commission, which were sent to the Petitioner on February 27, 2000.

11. The Petitioner requested once again a longer period to provide additional information; the Commission offered additional 15 days and received such information on May 9, 2001. On May 15, 2001, the IACHR informed the Parties that the petition had its denomination converted from "case" to "petition", with the entrance into force of its new Rules of Procedures; the CIDH also forward the latest Petitioner's information to the State, to which Ecuador responded on July 30, 2001.

12. On a communication dated September 5, 2001, the Petitioner responded to the State's additional information of July 30, 2001. This last additional information was forward to the State on September 11, 2001.

III. POSITIONS OF THE PARTIES REGARDING ADMISSIBILITY

A. Petitioner

13. The Petitioner relates that in April 1997 a corruption scheme called the “Red Peñaranda” was brought into light in Ecuador. Several members of the Congress were involved in said scheme and a police operation was implemented for their arrest, following an order of the Supreme Court of Justice. Such operation had been placed under the command of General Efraín Ramírez, one of the alleged victims. The information concerning the police search group reached the press, what enabled the legislators to hide before any arrest was performed. The public opinion, impatient for measures against the corruption scandal, forced the government to take action and on May 5, 1997, 15 days after the arrest order had been enacted, the Minister of Government publicly announced that General Efraín Ramírez Echeverría and General Acosta Luna had been placed under “transitory status” (one step from being expelled from the National Police). The Executive Decree No. 640, of September 9, 1997, contained such decision, which the Petitioner considers to be in violation to Article 8 of the Convention, the Constitution and other national legal dispositions.

14. The Petitioner claims that on account of such action, the alleged victims lodged a request for unconstitutionality of the Executive Decree before the Constitutional Tribunal. On January 13, 1998, the Constitutional Tribunal decided in their favor, declaring the Decree to be unconstitutional and suspending its effects. The Petitioner claims that once the Decree loses its effects, all rights previously accorded to those officers are to be restituted. Those rights are, among others, (i) the replacement of their hierarchy and seniority; (ii) placement according to their real seniority; and (iii) professional stability.

15. According to the Petitioner, on January 28, 1998, the President enacted the Executive Decree No. 1062, reintegrating Mr. Ramírez and Mr. Acosta to the active service. However, on that same date, by means of Executive Decree No. 1065, the President appointed as General Commander Mr. Jorge Villaroel Merino, an officer of less seniority than Mr. Ramírez and Mr. Acosta. Still on January 28, 1998, the Minister of Government issued the Ministry Agreement No. 00033, appointing General Carlos Trujillo to the position of Chief of Staff (Jefe de Estado Mayor), who also carried an inferior seniority. The Petitioner claims that Mr. Ramírez and Mr. Acosta should be the officials appointed to those positions, in order to respect their seniority. He alleges that by doing otherwise the State disrespected the decision of the Constitutional Tribunal and hence violated the Articles 119 and 186 of the Ecuadorian Constitution. [FN1]

[FN1] The petition claims a violation of Article 16 of the Constitution which disposes that it is the greatest duty of the State consists of respecting and of assuring the respect of the human rights guaranteed by the Constitution. The Petitioner also claims a violation of Article 186 of the Constitution: the stability and the professionalism of the members of the public force are guaranteed. They may only be deprived from their grades, honors and pensions for the causes and forms prescribed by the law; and Article 119: the Institutions of the State, their organs and dependences and public officials cannot perform other attributions besides those set forth by the Constitution and by the law, and have the obligation of cordoning their actions toward the common interest.

16. Pursuant to the petition, Mr. Ramírez and Mr. Acosta addressed the Constitutional Tribunal once again, this time for considering that its previous decision had not been complied with, claim which the Tribunal confirmed on April 7, 1998. Regardless the numerous attempts of requesting the State to restitute all the rights the alleged victims were entitled to, as of the present date, according to the information provided by the petition, Mr. Ramírez and Mr. Acosta have not been placed under the positions they consider appropriate to their grade and seniority.

17. The Petitioner also relates that when Mr. Ramírez and Mr. Acosta were reinstated in the National Police on January 28, 1998, they received the position of National Director of Health and General Director of Operations of the National Police, respectively. Because they believe said functions are not compatible with their grade and because two of the higher posts within the police institution had been accorded to lower officers, Mr. Ramírez and Mr. Acosta never took over their new attributions. As a result, the General Council (Consejo de Generales) discharged both Generals from the National Police, for reasons of illegal absence (desertion)[FN2]. Mr. Ramírez and Mr. Acosta frightening losing all the advantages accumulated during the years they had worked for the National Police, in addition to the criminal charges which were presented against them, felt compelled to present their voluntary request for transitory status. The State however did not accept their voluntary request and proceeded, says the Petitioner, with the dismissal for illegal absence, which occurred on June 2, 1999.

[FN2] Article 66 e) of the National Police Staff Law.

18. Finally, the Petitioner relates that for the purpose of obtaining the documents and resolutions related to their dismissal process, Mr. Ramírez and Mr. Acosta lodged a writ of habeas data on November 11, 1998. The Petitioner sustains that the procedure of an habeas data is expeditious in Ecuador, thus expected to terminate within 15 days. The Petitioner mentioned that no decision had been reached even though seven months had elapsed. The Commission has not received any update on that issue as of the date of the present report.

B. State

19. The State, in turn, says that by reincorporating Mr. Ramírez and Mr. Acosta to the National Police on January 28, 1998, the State had complied with the decision of the Constitutional Tribunal. Such reincorporation rendered both Generals equivalent positions to those they had before losing their posts.

20. Moreover, the State claims that the decision for appointing other officers distinct from the alleged victims is an optional and discretional legal faculty of the President, granted by Article 15 of the National Police Organic Law.

21. According to the position of the State, the decision of the Constitutional Tribunal (the second decision) which judged the non-compliance with its first decision could be justified because Mr. Ramírez and Mr. Acosta were not appointed to a specific post when they got reinstated in the National Police and not because neither of the Generals had been granted the

posts they understood correct. The State explains that it then appointed the alleged victims to two precise positions, those of National Director of Health and General Director of Operations of the National Police.

22. In relation to the Petitioner's allegation that one official of lower grade could not occupy a higher post than another higher grade official, the State share his opinion, sustaining that the hierarchy order is the fundament of the Police. But the State proposes the legal separation of those officials as a solution to the issue of insubordination, i.e. he higher grade official who was not promoted would be compelled to leave the National Police.[FN3]

[FN3] The State relies upon the Article 33 of the new Staff Law, which was not into force when the events described by the petition took place. Such Article mentions that the General Officials of higher seniority than that of who has been appointed General Commander would be places under transitory situation or shall request immediate dismissal.

23. With respect to the requirements for the admissibility of the petition the State sustains that the facts presented by the Petitioner do not constitute human rights violations, since the alleged victims were reintegrated to the National Police and they were offered posts which they never took over. The State considers that it has complied with all internal decisions from the Constitutional Tribunal in this regard and therefore understands that the allegations of the Petitioner lack characterization, that is, do not describe facts that may amount to violations to the rights protected under the American Convention.

24. To support its position the State relies upon the rule of fourth instance, alleging that the Commission has no competence to analyze decisions emerging from domestic courts where due process has applied, unless there has been a violation of the Convention.

IV. ANALYSIS

A. Competence *ratione personae*, *ratione loci*, *ratione temporis*, and *ratione materiae* of the Inter-American Commission

25. The petitioner is entitled, under Article 44 of the American Convention, to lodge complaints with the IACHR. The petition names, as its alleged victim, an individual person with respect to whom Ecuador had assumed the commitment of respecting and ensuring the rights enshrined in the American Convention. As regards the State, the Commission notes that Ecuador has been a party to the American Convention since December 28, 1977, when it deposited the corresponding instrument of ratification. The Commission therefore has competence *ratione personae* to examine the complaint.

26. The Commission has competence *ratione loci* to deal with the petition since it alleges violations of rights protected by the American Convention occurring within the territory of a state party thereto. The IACHR also has competence *ratione temporis* since the obligation of respecting and ensuring the rights protected by the American Convention was already in force

for the State on the date on which the incidents described in the petition allegedly occurred. Finally, the Commission has competence *ratione materiae* since the complaint describes violations of human rights protected by the American Convention.

B. Other requirements for admissibility

1. Exhaustion of domestic remedies

27. Article 46(1)(a) of the American Convention provides that the admissibility of petitions 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 requiring the exhaustion of domestic remedies does not apply: (a) when 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) when the party alleging violation of his rights has been denied access to the remedies of domestic law or has been prevented from exhausting them, and (c) when there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

28. The Commission has decided in previous cases that when an internal decision is biding no appeal is required to that end.[FN4] In the present case, the Petitioner alleges the non-compliance of the State with the decision of the Constitutional Tribunal of January 28, 1998 which ordered Mr. Ramírez and Mr. Acosta to be reinstated in the National Police of Ecuador, with all the rights they were entitled to as officers. The Petitioner contends that the State partially observed the Tribunal’s decision, reincorporating both Generals but not in accordance with the position they merited. The central issue underlying the claims regards the fraction of the Tribunal’s verdict which was never complied with, that is the reincorporation to the appropriate position within the National Police, according to the Petitioner.

[FN4] IACHR, Cesar Cabrejos Bernuy, Report N° 75/99, Case 11. 800 (Peru) published in the Annual Report of the Commission 1999.

29. Inasmuch as the State has the obligation to observe and apply the decisions of its internal courts, no further legal remedy should be requested to ensure such duty.

30. In addition, the State has declared that the process chosen by Mr. Ramírez and Mr. Acosta before the Constitutional Tribunal and the decisions arising thereof were suitable for resolving their situation, albeit the favorable or unfavorable result that was reached. This means that the State is not opposed to the Petitioner claims regarding the exhaustion of domestic remedies.

31. Consequently, without mentioning the question of characterization that will be further discussed, the Commission finds that if the allegations could constitute a violation to the rights protected under the Convention, the case under study falls under the exception set forth in Article

46(2)(a) of the Convention, which stipulates that the requirement to exhaust domestic remedies set forth in Article 46(1)(a) of the Convention is not applicable when "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".

2. Deadline for lodging the petition

32. Article 46(1)(b) of the Convention states that for a petition to be admissible, it must be 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. However, Article 46(2) of the Convention and Article 32(2) of the Commission's Rules of Procedure provide that this "rule does not apply when it has been impossible to exhaust internal remedies due to a lack of due process, denial of access to remedies, or unwarranted delay in issuing a final decision (...) Nor does this rule apply where the allegations concern a continuing situation--where the rights of the victim are allegedly affected on an ongoing basis." [FN5]

[FN5] See IACHR, Report N° 72/01, Op. Cit., paragraph 54; Report N° 5/02, Op. Cit., paragraph 55; Report N° 31/99 (Admissibility), Case 11.763, Plan de Sánchez Massacre, Guatemala, April 16, 1999, paragraphs 29 and 30.

33. Without prejudging the merits of the case, the Commission has previously decided that failure to enforce a final judgment is an on-going violation by States that persists as an infraction of Article 25 of the Convention, which sets forth the right to effective judicial protection. Therefore, in such cases, the requirement regarding the deadline for lodging a petition, set forth in Article 46(1)(b) of the American Convention, is not applicable.

3. Duplication of proceedings and res judicata

34. No prior procedure dealing with this complaint has been initiated by the Commission, nor is there any other procedure pending examination by any other international organization.

4. Characterization of the alleged facts

35. Articles 47(b) and 47(c) of the Convention require the Commission to consider a petition to be inadmissible if the petition does not state facts that tend to establish a violation of the rights guaranteed by the Convention, or if the statements of the petitioner or of the state indicate that the petition is manifestly groundless or obviously out of order.

36. The petitioner claims that the Ecuadorian State violated, with respect to Mr. Ramírez Echeverría and Mr. Acosta Luna, the rights protected by the American Convention in Article 8, right to a fair trial, for not complying with the decisions of the Constitutional Tribunal of that country.

37. These allegations arise, according to the Petitioner, from the fact that the Ecuadorian State failed to reinstate the two Generals in the National Police on the position compatible with their grade and seniority, albeit the decision of the Constitutional Tribunal in that sense.

38. The State, on the other hand, sustains that it has fully observed the Tribunal's decision since the alleged victims were reinstated in the Police institution shortly after, on January 28, 1998. The State understands that the Tribunal's decision which judged unconstitutional the Executive Decree No. 640 and ordered the reincorporation of Mr. Ramírez and Mr. Acosta to the Police made no specific reference to posts they should be given to once reinstated.

39. Nevertheless, the second decision of the Constitutional Tribunal in respect to the case under study deemed unaccomplished its first decision. Furthermore, such second decision (the non-compliance decision) took place on April 7, 1998, hence posterior to the decision of reinstatement and, most important, said second judgment expressly states that the non-compliance was due to the omission of the State to appoint Mr. Ramírez as Chief of Staff and Mr. Acosta as Director of Operations of the National Police. On August 24, 1998, the State finally specified the posts to be occupied by the alleged victims: Health Director of the National Police by Mr. Ramírez and General Director of Operations by Mr. Acosta.

40. Pursuant to what has been presented by the parties, the Commission believes that the State has demonstrated having positively reinstated the two alleged victims. The IACHR also notes that there is a discussion on whether the posts offered the Mr. Ramírez and to Mr. Acosta are compatible to their grades or if such proposal is in breach to the decision issued by the Constitutional Tribunal. In this respect, the Commission considers that it is not competent to analyze the internal measures taken by the Ecuador to reinstate Mr. Ramírez and Mr. Acosta in the National Police, nor it is competent to determine the scope of the internal decisions. This is because it is not a function in principle of the IACHR to supersede the assessment of facts made by domestic bodies with its own interpretations. By acting otherwise, the Commission would be setting itself up as a "fourth instance." The jurisprudence of the Commission on this point has been constant.

41. Thus, the IACHR has maintained, since its first pronouncement on this issue, that:

The Commission is competent to declare a petition admissible and rule on its merits when it portrays a claim that a domestic legal decision constitutes a disregard of the right to a fair trial, or if it appears to violate any other right guaranteed by the Convention. However, if it contains nothing but the allegation that the decision was wrong or unjust in itself, the petition must be dismissed under this formula. The Commission's task is to ensure the observance of the obligations undertaken by the States parties to the Convention, but it cannot serve as an appellate court to examine alleged errors of internal law or fact that may have been committed by the domestic courts acting within their jurisdiction.[FN6]

[FN6] IACHR. Report N° 39/96, Case 11.673 (Marzioni, Argentina), October 15, 1996.

42. The Commission finds no evidence to indicate arbitrary behavior in the judicial proceedings – merely a simple disagreement with the measures chosen to execute such decisions. The IACHR believes that it has no jurisdiction to determine which posts were appropriate to be occupied by the alleged victims. Doing so would mean the interpretation of domestic law, which is beyond its competence.

43. In light of the above, the Commission believes that it lacks competence to resolve the underlying matter and, consequently, disqualifies itself from analyzing it since the facts do not tend to establish a violation of rights enshrined in the American Convention.

V. CONCLUSIONS

44. Based upon the foregoing considerations of fact and law, the Commission believes that the petition is inadmissible under the requirements set in Article 47(b) of the American Convention, in that it does not indicate facts that tend to establish any violation of the rights protected by that Convention.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this petition inadmissible.
2. To notify this decision to the petitioner and to the State.
3. To publish this decision and to include it in its Annual Report to 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., on the 24th day of October, 2005. (Signed): Clare K. Roberts, President; Susana Villarán, First Vice-President; Paulo Sérgio Pinheiro, Second Vice-President; Evelio Fernández Arévalos, Jose Zalaquett, Freddy Gutiérrez and Florentín Meléndez, Commissioners.