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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 98/05; Petition 241/04
Session: Hundred Twenty-Third Regular Session (11 – 28 October 2005)
Title/Style of Cause: Raul Zavala Malaga and Jorge Pacheco Rondon v. Bolivia
Doc. Type: Decision
Decided by: President: Clare K. Roberts;
First Vice-President: Susana Villaran;
Second Vice-President: Paulo Sergio Pinheiro;
Commissioners: Jose Zalaquett, Evelio Fernandez Arevalos, Freddy Gutierrez, Florentin Melendez.
Dated: 27 October 2005
Citation: Zavala Malaga v. Bolivia, Petition 241/04, Inter-Am. C.H.R., Report No. 98/05, OEA/Ser.L/V/II.124, doc. 5 (2005)
Represented by: APPLICANT: the Public Defender of the Republic of Bolivia
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I. SUMMARY

1. On March 25, 2004, the Inter-American Commission on Human Rights (hereinafter “the Commission” or the “IACHR”) received a petition filed by the Public Defender of the Republic of Bolivia (hereinafter “the petitioner”) alleging that the Republic of Bolivia (hereinafter “the State” or “the Bolivian State”) was responsible for noncompliance with a judgment on amparo [guarantee of constitutional rights] handed down by the First Social and Administrative Chamber of the Superior Court of La Paz, in favor of Raúl Zavala Málaga and Jorge Pacheco Rondón (hereinafter “the alleged victims”).

2. The petitioner alleged that the State was responsible for violation of the rights to participate in government and to judicial protection, established in Articles 23 and 25 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”), to the detriment of the alleged victims, and of the general obligation to respect and guarantee the rights protected under Article 1(1) of the Convention. The alleged victims contended that they had exhausted the domestic remedies established in Bolivian legislation by filing a petition for amparo, which was decided in their favor by the First Social and Administrative Chamber of the Superior Court of La Paz.

3. On February 2, 2005, the Bolivian State signed a compromise agreement in which it pledged to work towards a friendly settlement, pursuant to Articles 48(1)(f) and 49 of the American Convention on Human Rights. In a brief dated August 3, 2005, the Bolivian Public Defender noted that the friendly settlement had been implemented and therefore requested the IACHR to close the case.

4. This report on the friendly settlement includes a summary of the facts alleged by the petitioner and the friendly solution reached, in addition to an agreement on its publication, in accordance with Article 49 of the Convention and Article 41(5) of the Commission's Rules of Procedure.

II. PROCEDURES OF THE COMMISSION

5. On March 25, 2004, the Commission received a petition lodged by the Public Defender of the Republic of Bolivia, who alleged failure to comply with a judicial decision to the detriment of Raúl Zavala Málaga and Jorge Pacheco Rondón.

6. The Commission assigned number 241/2004 to the petition and on May 7, 2004, it requested information from the petitioner.

7. On May 12 and 26, 2004, the petitioner submitted the additional information requested by the Commission.

8. On August 20, 2004, the Commission transmitted the relevant parts of the petition to the State, and granted it two months to submit its response, in accordance with the provisions of Article 30(3) of its Rules of Procedure.

9. On August 23, 2004, the IACHR received additional information from the petitioner, which was transmitted to the State with a deadline of 30 days for its response. On September 29, 2004, the State requested an extension of the period to respond to the petitioners' observations. On September 30, 2004, the IACHR granted it an additional 30 days to respond.

10. On December 30, 2004, the IACHR received a communication from the petitioner, which it forwarded to the State on January 31, 2005, granting it 15 days to submit its comments.

11. On February 16, 2005, the IACHR received a communication from the petitioner indicating that the Ministry of Health and Sports had reached an agreement with Raúl Zavala Málaga and Jorge Pacheco Rondón with a view to putting an end to the complaints lodged by these two persons regarding noncompliance with constitutional judgment 156/2004-R of February 4, 2004. On March 28, 2005, the Commission also received a communication from the State advising it that a compromise agreement had been signed by the parties.

12. On March 8, 2005, the IACHR sent a communication making itself available to the parties in accordance with Article 48(1)(f) of the American Convention on Human Rights and Article 41 of the Commission's Rules of Procedure.

13. On April 15 the IACHR received a communication from the State requesting the petition file, in view of the agreement between the parties.

14. On April 22, 2005, the IACHR received a communication from the petitioner expressing an interest in submitting the matter to the procedure referred to in Article 41(1) of the Rules of Procedure of the IACHR. This communication was transmitted to the State on May 18.

15. On August 3, 2005, the IACHR received a communication from the petitioners advising that the State had complied with the compromise agreement signed on February 2, 2005 between Raúl Zavala Málaga and Jorge Pacheco Rondón and the Ministry of Health and Sports. In that communication, the petitioner requested the IACHR to conclude the proceedings in this case with a report pursuant to Article 41(5) of the Commission's Rules of Procedure. The petitioners also thanked the Inter-American Commission on Human Rights for its supervision and participation in the case. The Commission forwarded this communication to the State on August 18, 2005.

III. FACTS

16. The petitioner alleged that on May 21, 2003, the Administrative Director General of the Ministry of Education ordered the severance of Jorge Pacheco Rondón and Raúl Zavala Málaga from the posts they held in the Deputy Ministry for Sports, an entity under the Ministry of Education, Culture, and Sports. The reason given for the severance was the elimination of posts provided for in Article 2 of Ministerial Resolution No. 10/03 of April 8, 2003, issued by that Ministry. The severance resolution also stated that since the Ministry of Finance had transferred the budget of the Deputy Ministry of Sports to the Ministry of Health and Sports[FN1], the Ministry of Education no longer had legal responsibility or competence or any obligations whatsoever with regard to the Deputy Ministry of Sports.

[FN1] Pursuant to Law No. 2446, Organic Law of the Executive Branch dated March 19, 2003 the Deputy Ministry of Sports was transferred to the authority of the Ministry of Health and Sports.

17. The petitioner indicated that on May 29, the alleged victims presented to the Director in question a petition or appeal for reversal [recurso de revocatoria]of the administrative document on which their severance was based. In this petition, they pointed out that there was no justified cause for their dismissal and that the legal formalities stipulated in the Basic Rules of the Staff Administration System, adopted by Supreme Decree 26115 of March 16, 2001, had not been observed.

18. The petitioner alleged that the administrative authority did not rule on the appeal, but instead used silence on the part of the administration as a negative response. He further stated that in view of the denial of the appeal for reversal by way of administrative silence, in a note dated June 13 the appellants filed an appeal with a higher administrative authority [recurso jerárquico], in accordance with the provisions of the Regulations for Appeals for Reversal and Appeals to a Higher Authority in the Government Civil Service [Reglamento de Recursos de Revocatoria y Jerárquicos para la Carrera Administrativa].

19. In a decision dated July 15, 2003, the General Superintendency of the Civil Service allowed the appeal to a higher authority and opened the discovery period. On August 28, the General Superintendency decided on the appeal to a high authority in Administrative Resolution SSC/IRJ/139/2003. In that Resolution, the Superintendency found the allegations of the appellants to have merit, and it therefore ordered the revocation of the administrative document on which their dismissal was based. The Superintendency further instructed the Minister of Health and Sports to reinstate the appellants.

20. The petitioners alleged that the Ministry of Health and Sports ignored the decision of the Superintendency. On those grounds, on November 14, 2003, the alleged victims filed a constitutional amparo petition with the First Social and Administrative Chamber of the Superior Court of La Paz, requesting that it order the Ministry of Health to comply with the Administrative Resolution for reinstatement.

21. On November 20, 2003, the First Social and Administrative Chamber of the Superior Court of La Paz upheld the amparo petition, and admonished “the appellees to comply strictly with Resolution No.139/03 issued by the General Superintendency of the Civil Service.[FN2]

[FN2] Superior Court of la Paz, First Social and Administrative Chamber, Resolution No. 45/03-SAA-I Constitucional of November 20, 2004.

22. It was reported that, pursuant to the law, the Resolution of the First Social and Administrative Chamber was referred to the Constitutional Tribunal for official review. However, the petitioner alleged that the judgment of the Amparo Tribunal was meant to be complied with immediately, without observations.[FN3] On February 4, 2004, the Constitutional Tribunal issued judgment 156/2004-R in which it upheld the Resolution of the Superior Court of La Paz.

[FN3] Art. 102 (V) of Law 1836 (Law of the Constitutional Tribunal).

23. In his capacity as National Public Defender, the petitioner requested the Ministry of Health to provide information on the action taken by the Ministry to comply with the judicial ruling. The petitioner alleged that it received a response that indicated that the Ministry of Health had requested the Ministry of Finance to authorize an additional budget allocation, a request that was denied. The Public Defender’s Office also requested information from the Supreme Court, which pointed out that on March 5 and 17, 2004, the alleged victims requested the Tribunal to instruct the appellees to comply with the judgment. In response to that request, on March 8 2004 the Constitutional Tribunal advised the Ministerio Público [Office of the Attorney General] that it should initiate an investigation into the alleged offense of noncompliance with the resolutions in proceedings of habeas corpus and constitutional amparo.[FN4]

[FN4] Art.179bis of the Bolivian Criminal Code establishes that “public officials or individuals who do not strictly comply with judicial decisions issued in habeas corpus or constitutional amparo proceedings shall be punished by a prison term of two to six years and a fine ranging from one hundred to three hundred daily wages.”

IV. FRIENDLY SETTLEMENT

24. The State and the petitioners signed the compromise agreement which contained the following provisions:

COMPROMISE AGREEMENT

The present private document, which may be raised to the category of public document solely upon recognition of the signatures and markings, signed between the parties, contains the following clauses:

FIRST.– Regarding the parties: Parties of the first part, Fernando Antezana Aranibar, representing the Ministry of Health and Sports, Félix Sandoval, Deputy Minister of Sports, Federico Álvarez Plata, Administrative Representative of the Deputy Ministry of Sports, Javier Terán, National Coordinator of ODESUR 2006 Games; parties of the other part, Jorge Pacheco Rondón with CI. 188393 LP, domiciled at calle N° 16 #100, Obrajes Zone, an architect by profession, and Raúl Zavala Málaga with CI. 098169 LP., domiciled at Avenida 14 de Septiembre # 5256, Obrajes Zone, an engineer by profession.

SECOND.- Background

Administrative Resolution SSC/IRJ/139/2003 of August 28, 2003, issued by the Civil Service Superintendent, which decided on the appeal to a higher authority, determining: First.- To revoke the administrative order by which the public officials were dismissed and to immediately reinstate them in the posts they held at the same rank and salary and to pay these public servants their salaries for the months of April and May of this year.

Second.- To instruct the Minister of Health and Sports to execute the Administrative Resolution, by ordering the Deputy Minister of Sports to reinstate Jorge Pacheco Rondón and Raúl Zavala Málaga to the posts they held with this public entity.

Third.- To report to the Superintendency of the Civil Service on compliance with the Resolution, so that it can determine whether or not to submit information to the Accounts Office [Contraloría]. Resolution N° 45/03-SSA-I of November 20, 2003 issued by the First Social and Administrative Chamber of the Superior Court of the Judicial District of La Paz, which declares the constitutional amparo petition to have merit and admonishes the appellee authorities to comply with Administrative Resolution No. 139103; in addition, each of the appellees is fined Bs. 500. Constitutional Judgment 0156/2004-R of February 4, 2004, in the operative section, APPROVES Resolution N° 45/03-SSA-I of November 20, 2003 issued by the First Social and Administrative Chamber of the Superior Court of the Judicial District of La Paz.

According to the report of the prosecutor of the General Department of Legal Affairs dated September 7, 2004, there is a criminal proceeding against the Minister of Health in the Fifth Court for Preliminary Criminal Proceedings [Juzgado 5to de Instrucción en lo Penal Cautelar] under case number 2204/07654, for noncompliance with judicial decisions.

Complaint lodged with the Inter-American Commission on Human Rights. In a communication, Ref. D.P.4074/2004, dated September 6, the National Public Defender communicated to the Minister of Health that he had lodged a complaint with the Inter-American Commission on Human Rights against the Bolivian State for violation of political rights, judicial protection, and fair remuneration.

THIRD.- Agreements reached.- The parties have arrived at the following agreements:

3.1 The impossibility of reinstating Mr. Pacheco and Mr. Zavala in their previous places of work.

3.2 Because of budgetary restrictions and the issuance by the Executive Branch of new austerity measures, it is impossible to continue maintaining the salary levels they enjoyed in their previous posts.

3.3 The Ministry of Health and Sports, through the Deputy Ministry of Sports has entered into the following agreement with Jorge Pacheco Rondón:

a) That he will be contracted for the ODESUR Project to work as Professional Sports Infrastructure Controller [Profesional de Fiscalización de Infraestructura Deportiva] at a monthly salary of Bs. 8,000 (eight thousand bolivianos); this salary shall be charged against budget item 25200, using resources of the Deputy Ministry of Sports, Source 10 TGN;

b) That the amount of Bs. 125,964 (one hundred twenty-five thousand, nine hundred sixty-four bolivianos) shall be paid out of the budget of the Deputy Ministry of Sports for past wages accrued during the 2003 and 2004 fiscal years.

3.4. The Ministry of Health and Sports, through the Deputy Ministry of Sports, has entered into the following agreement with Raúl Zavala Málaga:

a) That he shall be instated as the head of sports infrastructure, with rank [Item] No. 13, as of January 3, 2005, for which the monthly salary is Bs. 6,000 (six thousand bolivianos), to be paid out of the budget of the FID Sports Investment Fund, and his government service shall be recognized as continuous as of his appointment.

b) That the amount of Bs. 54,036 (fifty-four thousand thirty-six bolivianos) shall be paid out of the budget of the Deputy Ministry of Sports, for past wages accrued during the 2003 and 2004 fiscal years.

FOURTH.- Discontinuance.- Jorge Pacheco Rondón and Raúl Zavala Málaga shall formally and expressly discontinue all legal action taken, on a national level, with the Fifth Court for

Preliminary Criminal Proceedings, and internationally, with the Inter-American Commission on Human Rights.

Jorge Pacheco Rondón and Raúl Zavala Málaga shall formally and expressly refrain from undertaking any future judicial or extrajudicial action pertaining to compliance with Administrative Resolution SSC/IRJ/139/2003 of August 28, 2003, by virtue of the fact that their petition has been fully resolved.

FIFTH.- Acceptance.- The parties, by mutual consent, without any pressure or fraud involved, indicate their full agreement with each and every one of the clauses of the Compromise Agreement, in witness whereof it is signed in two equally authentic copies on the second day of February, two thousand and five [...].

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

25. In a brief dated August 3, 2005, the Bolivian Public Defender, following a similar communication from Jorge Pacheco Rondón and Raúl Zavala Málaga, requested the Commission to close the case since the basic agreement signed in the friendly settlement had been fulfilled.

26. The IACHR reiterates that, in accordance with Articles 48(1)(f) and 49 of the Convention, the purpose of this procedure is “to reach[...] a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention.” By agreeing to carry out this procedure the State showed its intention to comply with the purposes and objectives of the Convention, by virtue of the principle *pacta sunt servanda*, according to which states shall comply in good faith with obligations assumed under treaties. It would also like to reiterate that the friendly settlement procedure stipulated in the Convention allows for individual cases to be concluded in a noncontentious manner, and it has proven to be an important vehicle for a solution that both parties can use in cases involving a variety of countries.

27. The Commission is highly appreciative of the efforts made by both parties to achieve this settlement, which is compatible with the purposes and objectives of the Convention.

VI. CONCLUSIONS

28. On the basis of the foregoing considerations and by virtue of the procedure referred to in Articles 48(1)(f) and 49 of the American Convention, the Commission would like to reiterate its deep appreciation for the efforts made by the parties and its satisfaction with the friendly settlement agreement achieved in the present case, based on the objectives and purposes of the American Convention.

29. By virtue of the considerations and conclusions set forth in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To approve the terms of the friendly settlement agreement signed by the parties.
2. To consider as settled the dispute regarding the facts that gave rise to this petition.
3. To publish this report and include it in its annual report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in Washington, D.C., on the 27th day of October, 2005. (Signed): Clare K. Roberts, President; Susana Villarán, First Vice-President; Paulo Sérgio Pinheiro, Second Vice-President, and Commissioners José Zalaquett; Evelio Fernández Arévalos, Freddy Gutiérrez, Florentín Meléndez.