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Institution: Inter-American Commission on Human Rights
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Session: Hundred Twenty-Fourth Session (27 February – 17 March 2006)
Title/Style of Cause: Santiago Luis Chavez Cordova v. Peru
Doc. Type: Decision
Decided by: President: Evelio Fernandez Arevalos;
First Vice-President: Paulo Sergio Pinheiro;
Second Vice-President: Florentin Melendez;
Commissioners: Clare K. Roberts, Freddy Gutierrez Trejo, Paolo Carozza,
Victor E. Abramovich.
Dated: 15 March 2006
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OEA/Ser.L/V/II.127, doc. 4 rev. 1 (2006)
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I. SUMMARY

1. On November 12, 1998, during its on-site visit to Peru, the Inter-American Commission on Human Rights (hereinafter, “the Commission” or “the IACHR”) received a petition from Mr. Santiago Luis Chávez Córdova (hereinafter, “Mr. Chávez” or “the petitioner”), alleging that the Republic of Peru (hereinafter, “Peru,” “the State,” or “the Peruvian State”) violated to his detriment the right to effective judicial protection set forth in Article 25 of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) by failing to comply with the judgment of the Supreme Court of the Republic of Peru of May 23, 1996, that ordered his reinstatement and return to active duty within the National Police of Peru with due recognition of his rights, prerogatives, seniority, promotions, and economic benefits.

2. The State claims to have resolved the case satisfactorily with the petitioner and asks for the case to be permanently closed since the grounds for the petition no longer exist.

3. In this report, the Commission analyzes the information available in light of the provisions of the American Convention and concludes that the petition does not tend to establish a possible violation of rights protected by the Convention. Thus, in accordance with Article 47.b of the American Convention, the IACHR decides that the petition is inadmissible and further resolves to forward this report to the parties, publish it, and include it in its Annual Report.

II. PROCESSING BY THE COMMISSION

4. On October 28, 1999, the Commission opened the petition and transmitted Mr. Chávez’s complaint to the State, with a period of 90 days to submit its observations. The State replied on

February 25, 2000 and, on March 20 of the same year, the Commission forwarded the pertinent parts to the petitioner. The parties continued to submit comments and additional information until the Inter-American Commission decided that the positions of each had been defined in sufficient detail to allow it to issue a ruling on the case's admissibility.

III. POSITIONS OF THE PARTIES

A. Petitioner

5. Mr. Chávez states that on January 1, 1979, he was promoted to Master Arms Lieutenant of the National Police of Peru (hereinafter, "National Police" or "PNP"). He claims that through Ministerial Resolution N° 0045-82-IN/GR-DIPER/DII, issued on September 15, 1982, he was retired on the grounds of psychosomatic disability. However, as a result of the legal proceedings instituted against the administrative resolution, by Supreme Decree of Execution of May 23, 1996, that resolution was declared null and void by the Constitutional and Social Chamber of the Supreme Court of the Republic. This aforementioned decision ordered the return of Mr. Chávez to active service, with due recognition of his rights, prerogatives, seniority, promotions, and economic benefits during the time he was suspended from service.

6. In compliance with the court's order, Ministerial Resolution No. 1090-99-IN/PNP of November 8, 1999, ordered Mr. Chávez's reinstatement to active status and the restoration of his former rank of PNP Master Arms Lieutenant. Later, on February 20, 2002, the PNP issued Director's Resolution No. 1628-2002-DIRPER-PNP, recognizing his service record of 32 years and 7 months spent working for the State and including the service time spent on suspension from active duty. This resolution also ordered that he be given the bonuses of two and three times his regular salary, respectively, for accumulating 25 and 30 years of service. On June 19, 2002, the Minister of the Interior issued Ministerial Resolution No. 1108-2002-IN/PNP, resolving to promote Mr. Chávez, on January 1, 1997, and January 1, 2002, respectively, to the ranks of MA Captain and MA Major.

7. According to the petitioner, he should be promoted to the rank of Commander, that is, a total of 3 promotions. Thus, by promoting him only two ranks, the Peruvian government failed to comply in full with the court order of May 23, 1996.

B. State

8. The State claims that it has taken all the relevant steps to ensure that the National Police of Peru fully complies with the terms of the court order.

9. With regard to the promotions to higher ranks, the State maintains that Mr. Chávez does not meet the requirements set by the Promotions Law and its regulations, as approved in Supreme Decree No. 0022-1989-IN of August 14, 1989, on account of his disqualification for the psychosomatic disability at the time of his retirement. It also points out that promotions to higher ranks are not automatic, but rather the result of a selection process, in which the previous rank must necessarily be held before progressing to the next; and so promoting a lieutenant three levels directly to the rank of commander would constitute a breach of the institutional order.

IV. ANALYSIS

10. The Commission will now analyze the admissibility requirements set forth in the American Convention.

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

11. The Commission notes that Peru has been a party to the American Convention on Human Rights since July 28, 1978, when it deposited the corresponding instrument of ratification.

12. 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 Peru had assumed the commitment of respecting and ensuring the rights enshrined in the American Convention. The Commission therefore has competence *ratione personae* to examine the complaint.

13. 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. Admissibility requirements of the petition

1. Exhaustion of domestic remedies

14. The Commission observes that the question it must decide is whether the judgment issued by the Constitutional and Social Law Chamber of the Supreme Court on May 23, 1996, was enforced. The State has not entered any objection regarding the requirement of exhaustion of local remedies. The Inter-American Court has held that “the objection asserting the non-exhaustion of domestic remedies, to be timely, must be made at an early stage of the proceedings by the State entitled to make it, lest a waiver of the requirement be presumed.”[FN1]

[FN1] I/A Court H.R., Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987, Series C, No. 1, para. 88; Fairén Garbi and Solís Corrales Case, Preliminary Objections, Judgment of June 26, 1987, Series C, No. 2, para. 87.

15. Accordingly, the Inter-American Commission considers that the requirement specified in Article 46.1.a of the American Convention has been met.

2. Filing period

16. With regard to the requirement set forth in Article 46.1.b of the Convention – that a petition must be lodged within six months from the date on which the alleged victim was notified of the final judgment exhausting domestic remedies – the Commission reiterates its doctrine whereby:

“Non-compliance with an unappealable judgment constitutes a continued violation by States that persists as a permanent infraction of Article 25 of the Convention, which establishes the right to effective judicial protection. Therefore, in such cases, the requirement concerning the period for submission of petitions stipulated in Article 46.1.b of the American Convention is not effective.”[FN2]

[FN2] I/A Court H.R., Loayza Tamayo Case, Preliminary Objections, Judgment of January 31, 1996, Series C No. 25, paragraph 40; Castillo Páez Case, Preliminary Objections, Judgment of January 30, 1996, Series C No. 24, paragraph 40; Case of Neira Alegría et al., Preliminary Objections, Judgment of December 11, 1991, Series C No. 13, paragraph 30.

17. In consideration of this, the requirement governing the timeliness of petition filings set out in Article 46.1.b of the American Convention is not applicable in the case at hand, in which the matter placed before the IACHR is the alleged ongoing failure to comply with the decision handed down by the Supreme Court of the Republic on May 23, 1996. In this connection, the Commission believes that the instant petition was lodged within a reasonable time, pursuant to Article 32 of its Rules of Procedure, the content of which Article is equivalent to that of Article 38 of the Regulations in force at the time the complaint was lodged.

3. Duplication of international proceedings and res judicata

18. The Commission has received no information from either the parties or other sources that would indicate that the substance of the instant petition is pending in any other international settlement proceeding.

4. Characterization of the alleged facts

19. Although the petitioner’s claim does not refer to any specific rights protected by the Convention, from the text the Commission understands that he is arguing an alleged violation of Article 25.2.c of the American Convention, in that he believes the State failed to comply with the judgment of the Supreme Court of Justice of May 23, 1996, declaring null and void Resolution No. 0045-82-IN/GR-DIPER/DII and ordering his reinstatement on active service, with due recognition of his rights, prerogatives, seniority, promotions, and economic benefits during the time he was suspended from service.[FN3]

[FN3] Annex A of the complaint contains a copy of the Supreme Court of Justice's judgment of May 23, 1996.

20. From the information provided by the State in the instant petition and confirmed by the petitioner, it can be seen that following the filing of the complaint and in compliance with the court order, Santiago Luis Chávez was reinstated in the National Police of Peru; his service seniority was recognized, including the time he was suspended from active duty; he was given the bonuses due to him for completing 25 and 30 years of service; and his promotion to the ranks of MA Captain and Major of the PNP was ordered.

21. In consideration of the foregoing, the Commission believes that the dispute still pending between the parties has to do solely and exclusively with the recognition of his promotions. Thus, the petitioner claims that the State failed to abide by the court order by promoting him only two ranks and not making him a commander. In turn, the State claims that the petitioner does not meet the requirements set in the Law on Promotions and its regulations for being promoted to the rank of commander.

22. Accordingly, the Commission notes that the judgment of the Supreme Court of Justice of May 23, 1996, which the petitioner claims was not complied with, orders the recognition of all his rights, including promotions. However, at no point does the judgment specifically indicate the type of promotions the petitioner is to be awarded, and neither does it specify the amount of the monetary bonuses which he is to receive.

23. Consequently, since the State promoted the petitioner to the ranks of PNP MA Captain and Major, the Commission holds that this element of the Supreme Court of Justice's judgment was also complied with by the relevant Peruvian authorities. In this case, the petitioner's claims regarding the State's refusal to promote him to the rank of commander is beyond the competence of the Commission, in that in and of itself it does not constitute the possible violation by the State' of Article 25.2.c of the American Convention.

24. Consequently, given the absence of facts that would tend to establish a violation of the rights enshrined in the American Convention, the Commission concludes that the petition is inadmissible under Article 47.b of the aforesaid instrument.

V. CONCLUSIONS

25. Based on 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 constitute 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 petitioners 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 in the city of Washington, D.C., on the 15th day of the month of March, 2006.
(Signed): Evelio Fernández Arévalos, President; Paulo Sérgio, Pinheiro, First Vice-President; Florentín Meléndez, Second Vice-President; Clare K. Roberts, Freddy Gutiérrez Trejo, Paolo Carozza and Víctor E. Abramovich, Commissioners.