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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 41/06; Petition 12.081
Session:	Hundred Twenty-Fourth Session (27 February – 17 March 2006)
Title/Style of Cause:	Luis Arturo Ventura Rivas v. El Salvador
Doc. Type:	Decision
Decided by:	President: Evelio Fernandez Arevalos; First Vice-President: Paulo Sergio Pinheiro; Commissioners: Clare K. Roberts, Freddy Gutierrez, Paolo G. Carozza, Victor E Abramovich. Commissioner Florentin Melendez Padilla, a Salvadoran national, did not participate in the discussion and decision in this report, in accordance with Article 17.2.a of the Rules of Procedure of the IACHR.
Dated:	15 March 2006
Citation:	Ventura Rivas v. El Salvador, Petition 12.081, Inter-Am. C.H.R., Report No. 41/06, OEA/Ser.L/V/II.127, doc. 4 rev. 1 (2006)
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## I. SUMMARY

1. On April 22, 1998, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “IACHR”) received a complaint filed by Mrs. Ana María Hernández de Ventura, (hereinafter “the petitioner”), alleging international responsibility on the part of the Republic of El Salvador (“the State”) for human rights violations against her husband, Luis Arturo Ventura Rivas (hereinafter “the alleged victim”) due to his removal as First Instance Judge of the La Libertad District and his subsequent prosecution and conviction for committing the crime of breach of public duty. The petitioner alleges that the facts reported represent the violation of various rights enshrined in the American Convention on Human Rights (“the American Convention”): right to a fair trial (Article 8); protection of honor and dignity (Article 11); and the right to judicial protection (Article 25), all in violation of the general duty to respect and ensure rights (Article 1.1).

2. Regarding the admissibility of the complaint, the petitioner asserted that she had exhausted domestic remedies, had filed the complaint within six months and had met the formal requirements established in the Convention and the Rules of Procedure of the IACHR. In response, the Salvadoran State asked that the complaint be declared inadmissible in that it did not comply with the provisions of Article 47.b of the American Convention. The State maintained that the facts reported by the petitioner as alleged violations had been heard by national judicial bodies in accordance with the rules of due process and within a reasonable period of time.

3. In the light of Articles 46 and 47 of the American Convention, the Commission concludes that it is not competent to rule on the complaint submitted by the alleged victims. Accordingly, the Commission decided to inform the parties and to make this report public and include it in its Annual Report.

## II. PROCESSING BY THE COMMISSION

4. On April 22, 1998, the Commission received a complaint filed by Ana María Hernández de Ventura on behalf of her husband, Luis Arturo Ventura Rivas; the complaint was assigned case number 12.081. On January 26, 1999, the IACHR forwarded the complaint to the government of El Salvador, asking it to submit its response within 90 days. On March 16, 1999, the government submitted its answer to the petition, which was forwarded to the petitioner on April 8 of the same year. On May 4, 1999, the Commission received an answer from the petitioner concerning the observations made by the State, and forwarded it to the State with a memorandum dated March 5, 1999.

5. On May 10, 1999, the IACHR made itself available to the parties for purposes of a possible friendly settlement of the case. On May 28 and June 12, 1999, the Commission received communications from the petitioner indicating her willingness to negotiate a friendly settlement. On August 14, 2000, the government of El Salvador rejected the opportunity to discuss a friendly settlement.

6. On September 21 and November 29, 2000, the petitioner submitted new information relating to the case. On December 13, 2000, the Commission forwarded this information to the State. From that date forward, the parties continued to submit observations and additional information until the Inter-American Commission felt that the position of each party had been adequately defined.

## III. POSITIONS OF THE PARTIES

### A. The petitioner

7. The petitioner asserts that on January 1, 1992, Mr. Luis Alberto Ventura Rivas was appointed Judge of the Court of First Instance of La Libertad District. On October 24, 1994, Mrs. Rosa María Alegría Kimarer filed a disciplinary complaint with the Supreme Court of Justice against the aforementioned judge, alleging procedural irregularities in a proceeding to which she was a party. A second disciplinary complaint was officially initiated by the court for alleged irregularities committed by the judicial official in another proceeding in his court, for having irregularly ordered the release of some individuals allegedly tied to drug-trafficking.

8. The petition asserts that the Supreme Court of Justice of El Salvador, through Resolution 10-C of January 4, 1995, decided to remove the alleged victim from his position of First Instance Judge of the La Libertad District. The Court based its decision on the judge's having issued an unjust decision in Mrs. Kimarer's case as the result of "negligent or ignorant" action and, in the second case, on the judge's having based his decision on "false evidence due to personal interest or bribery." [FN2]

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[FN2] The Court based its decision on the provisions of Articles 55(b) and (i) and 57 of the Judicial Career Law and Article [?] of the same law.  
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9. In the same decision to remove the alleged victim (Resolution 10-C), the Supreme Court ordered that the case be referred to a First Instance Judge for consideration of alleged criminal aspects that could derive from the case. On April 24, 1995, the First Instance Court began a criminal proceeding against the petitioner for the alleged crimes of breach of public duty and arbitrary acts. On April 3, 1996, that court issued an arrest order against Mr. Ventura, which was not executed.

10. According to the petitioner's assertions, initiation of this procedure violated the principle of legality and the natural judge of the alleged victim given that Article 419 of the Code of Criminal Procedure in effect at the time indicated the procedure the Court should follow in cases involving crimes committed by judicial officials. Thus, the law established that the court should order a preliminary hearing. Under this procedure, the court must order the respective Sectional Chamber to conduct the probable cause hearing and, upon its completion, the Chamber should inform the Supreme Court. With that information, the court was responsible for determining whether or not the case was admissible. If there were cause, the Court should refer the file to the First Chamber for Criminal Matters of the First Section of the Center. According to the petitioner, the Supreme Court of Justice failed to honor this procedure, asserting that on the date the criminal proceeding was filed the alleged victim no longer held the position of judge, and thus had no right to the guarantee of a preliminary hearing. In the view of the petitioner, such a procedure is unlawful in that the definition of the crime of breach of duty requires that the accused be a judge in order for the case to proceed and thus the preliminary hearing rules should have been followed.

11. The petitioner also alleged violations of the accused's right to a defense during the criminal proceeding. On this point, she indicated that when the defense attorney chosen by the accused withdrew she decided to ask the Office of the General Prosecutor of the Republic to appoint a public defender, who took up the position on July 25, 2000. The petitioner added that on July 31, the first instance judge "surprisingly" scheduled the public hearing for August 10, 2000.

12. According to the petitioner's allegations, the decision to conduct the public hearing under these circumstances violated the right to a substantive defense established in Article 8.2.d of the Convention. The petitioner asserted that according to the procedural rules in effect at the time[FN3], if the accused did not have counsel on the day of the public hearing, he could appoint another one of his choosing. In the view of the petitioner, in violation of this rule and not giving the accused the chance to appoint counsel of his own choosing, the Judge ordered the appointment of a public defender. The petitioner alleged that this procedural anomaly was highlighted by the Office of the Public Defender and the Office of the Prosecutor, which asked the judge to cancel the public hearing[FN4].

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[FN3] Article 378 of the Code of Criminal Procedure in effect at the time.

[FN4] Cf. brief submitted by Carlos Ivan Campanilla Campos, Assistant Prosecutor, before the First Instance Court of the City and Port of La Libertad, August 7, 2000.  
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13. The petitioner indicated that under these circumstances and given the limited amount of time allowed to prepare a public defense, the panel handed down a conviction against her husband. That decision was appealed by the defense before the Chamber of the Fourth Section of the Center. On November 8, 2000, the appeals chamber confirmed the final ruling, condemning the accused to four years in prison for the crime of breach of duty and one year and nine months for the crime of arbitrary acts to the detriment of public administration.

14. In addition, the petitioner asserted that there was a serious delay of justice in the procedure to the detriment of her husband's interests. The petitioner alleged that court proceedings continued for five years, six months and ten days, a time period that in her judgment is not reasonable in that it exceeds the statute of limitations on criminal action, which was five years in the case.

15. The petitioner concluded that her complaint related to violations of due process in the case, so that the IACHR could not be seen as having been asked to act as a new judge in the manner of a level of the judiciary. At the time the petition was initially submitted, the petitioner asserted that she had exhausted domestic judicial remedies by filing a writ of habeas corpus. That filing was rejected on April 22, 1996. Nonetheless, after that date the criminal process continued, during the course of which the petitioner asserted on various occasions the alleged procedural defects noted in the writ of habeas corpus and in the petition.

#### B. The State

16. In its response, the State argued that the petition did not point to facts that would characterize a violation of the rights and guarantees established in the American Convention. According to the State, both the disciplinary proceeding and the criminal proceeding brought against the alleged victim were conducted in accordance with domestic procedural rules and all the due process guarantees recognized by the Constitution of El Salvador and international human rights standards.

17. As for the alleged violation of the guarantee of a preliminary hearing, the State asserted that when the Supreme Court of Justice exercised its disciplinary power as recognized under the Salvadoran Constitution, at no time did it invade the jurisdiction of the General Prosecutor's Office or any other body charged with investigating the commission of crimes. These powers and jurisdictions belong to a different entity. When the disciplinary complaint was filed, the Court initiated an administrative disciplinary proceeding in which Attorney Ventura had his own counsel and could dispute the accusations made against him. The State argues that acting according to the law and analyzing the evidence available, the Court decided to remove Judge Ventura because it found actions contrary to his oath of office. Accordingly, on January 4, 1995,

after the corresponding disciplinary procedure was followed[FN5], the full Supreme Court ordered that the alleged victim be removed from his position as First Instance Judge[FN6].

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[FN5] Governed by Articles 57 and following of the Judicial Career Law.

[FN6] Article 55 of the Judicial Career Law establishes the penalty of removal for, among other reasons for “obvious ineptitude or inefficiency in the performance of the position.”

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18. Consequently, at the time the criminal investigation began, Mr. Ventura did not have the status of a judge and was thus not subject to the preliminary hearing system. On this point, the State pointed out that the complaint that led to the criminal proceeding was not initiated by the Attorney General’s Office but by a citizen, Bernardo Font Ribot, who filed a complaint against Attorney Ventura Rivas and Blanca Rubia Alas González, for the alleged crimes of breach of public duty by the former and malicious accusation by the latter, in their positions as judge and counterpart of the accuser in a judicial proceeding[FN7]. On the date that complaint was filed – April 4, 1995, attorney Ventura had already been removed from the judiciary and thus it was appropriate to follow the ordinary criminal procedure.

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[FN7] Cf. complaint filed by attorney Juan Manuel Bolaños Sandoval, general counsel to Mr. Bernardo Fount Robot, April 4, 1995 before the Criminal Court of La Libertad, at folios 2-4 of the criminal file under nos. 173-95/ 188-95-C, conducted before the Court of First Instance in the city and department of La Libertad.

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19. The State asserted that at no point was there any violation of due process rules, the right to a defense, and the principle of legality with respect to the alleged victim in that he did not put on a substantive defense because he was absent. The accused has evaded justice in order to keep the arrest order from being enforced against him. In addition, the accused’s attorneys have had the opportunity to challenge before a higher judicial authority all the decisions with which they have disagreed, including the decision convicting the accused.

20. As for the allegations made regarding violation of the guarantee of a substantive defense, the State stated that at no time has the accused been left without the protection of a technical defense given that during each and every one of the procedural stages he was assisted by private attorneys or public defenders appointed by the General Prosecutor’s Office. According to the State, the person who deliberately impeded his material defense was the accused himself by absenting himself from the proceeding to avoid being subject to an arrest order issued by the judge. Despite that failure to appear, throughout the entire process the participation of the technical defense of the accused’s interests was confirmed.

21. Regarding the alleged violation of the guarantee of timeliness, the State maintained that no delay of justice or violation of due process was demonstrated in that the judicial authority acted diligently in a complicated case in which the multiplicity of criminal violations and individuals accused necessitated time to carry out the investigation. The State asserts that there was a series of measures in the criminal process that required a reasonable amount of time to

implement. For example, the proceedings that emerged from the investigation of two former officials for the crime of passive bribery had to be joined. In addition, other proceedings were conducted against attorney Luis Arturo Ventura and the criminal complaint against the aforementioned accused for the crime of breach of duty was joined in the ruling and Mrs. Blanca Rubia Alas was also accused of malicious accusation. The State alleges that these issues caused the investigation to become complicated. On various occasions, attempts were made to close the investigation, whether through dismissal with or without prejudice or referrals for trial, in which the parties filed motions against these rulings. These motions had to be analyzed and ruled on following domestic rules, which meant that the investigation had to allocate time for this entire procedure.

22. The State also indicated that a large part of the procedural delay was due to the repeated withdrawals of private counsel appointed by the accused. According to the State, these withdrawals occurred at key moments in the case. Thus, attorneys Samuel Eliseo Sigaran and Marta Carolina Aviles withdrew shortly after the proceeding against attorney Ventura had been referred for trial, specifically after the period for submitting evidence, which meant the process had to be halted while appointment of a public defender was being sought. Once the Prosecutor's Office appointed a public defender, who accepted the assignment, the accused's wife asked that attorney Tito Sánchez Valencia be considered private counsel. Sánchez Valencia took up the position and once the date was set for choosing a partial jury list, he submitted his withdrawal from the case, which led to a new request to the General Prosecutor's Office and another assignment of and acceptance by public defenders.

23. In addition, the State rejected the argument of the alleged lapse of the statute of limitations on criminal action, asserting that according to Article 126 of the Criminal Code, this applies when there is "abandonment" of the criminal procedure, which did not happen in this case. As the State pointed out, the process was active at all times and was carried out diligently and a reasonable amount of time was dedicated to resolving the complex issues that the case presented.

24. The State maintained that given that the preceding arguments show that the State acted in accordance with the system of law to which the authorities are subject and that it cannot be demonstrated that the alleged victim's rights or minimum guarantees of due process have been violated, it is appropriate for the Commission to formally rule that the complaint filed is inadmissible.

#### IV. ANALYSIS OF ADMISSIBILITY

##### A. The Commission's competence *ratione personae*

25. Under Article 44 of the American Convention, petitioners may lodge complaints with the IACHR. The petition indicates that the alleged victim is Luis Arturo Ventura Rivas, with respect to whom El Salvador agreed to honor and ensure the rights enshrined in the American Convention. As for the State, the Commission points out that El Salvador has been a State Party to the American Convention since June 23, 1978, on which date the respective ratification

instrument was deposited. Therefore, the Commission has competence *ratione personae* to examine the petition.

26. The Commission is competent *ratione materiae* as the petitioners allege violations of rights protected by the American Convention. The Commission is competent *ratione loci* since the alleged violations occurred within the territory of a State party to the American Convention. The Commission is competent *ratione temporis* since the State was under the obligation to respect and protect the rights enshrined in the American Convention at the time of the alleged violations.

## B. Other Admissibility Requirements

### 1. Exhaustion of Domestic Remedies

27. Article 46.1 of the American Convention establishes that for a complaint to be admissible, remedies available under domestic law must have previously been exhausted. The petitioners argue that the decision by the Camara de la Cuarta Seccion del Centro de Nueva San Salvador dated November 8, 2000, marked the exhaustion of internal remedies. In consequence, the Commission deems that the abovementioned decision represented exhaustion of domestic remedies and that the requirements of Article 46.1 of the American Convention have been satisfied.

### 2. Timeliness of the Petition

28. Article 46.1.b of the American Convention establishes that a petition must be lodged within six months of the date on which the petitioners were notified of the final judgment that exhausts domestic remedies. The petition was received by the Commission before the exhaustion of the domestic remedies. Thus the Commission considers that the requirements of Article 46.1.b of the Convention have been satisfied.

### 3. Duplication of procedures and international *res iudicata*

29. The Commission finds that the substance of the petition is not pending in another international settlement procedure and does not substantially duplicate a previous petition examined by the Commission or other international organizations. Accordingly, the requirements of Articles 46.1.c and 47.d of the Convention have been met.

### 4. Characterization of the events alleged

30. Article 47.b of the Convention establishes that the Commission shall declare a petition inadmissible when it does not state facts that tend to establish a violation of the rights guaranteed by the Convention.

31. The petitioner asserted alleged violations of the right to a fair trial (Article 8), the right to protection of honor and dignity (Article 11), and the right to judicial protection (Article 25). Three legal issues were posited as creating those violations: initiation of the criminal proceeding

without the preliminary hearing formula, violation of the right to a defense in the conduct of the public hearing, and unwarranted delay in the criminal process. For its part, the State indicated that there was no violation of the principle of procedural legality because the preliminary hearing proceeding was not appropriate, there was no judicial delay in the case, and at no time were there any other violations of the accused's due process guarantees.

32. In analyzing the three charges alleged by the petitioner, the Commission finds no claims that demonstrate prima facie violations of the American Convention. First, the Commission feels that the absence of a preliminary hearing did not prejudice the petitioner's ability to present a defense because it was not appropriate in the instant case. The Commission notes that the procedure followed by the Supreme Court was consistent with the provisions of the Salvadoran Constitution, which empowers that court to initiate disciplinary actions against magistrates, first instance judges and justices of the peace[FN8]. Based on these constitutional provisions and a disciplinary complaint filed within its jurisdiction, the Supreme Court of Justice conducted a proceeding governed by the Judicial Career Law in which due process guarantees were granted to the accused. With removal of the court officer, the forum established by the Constitution lost its effect when the accused's ties to the judiciary were severed, since that guarantee is established to protect the independence of the judicial branch.

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[FN8] Constitution of the Republic of El Salvador, Article 182(9).  
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33. Secondly, the Commission finds no evidence of a lack of technical defense for the accused. It has been confirmed that in the proceeding the alleged victim was assisted by attorneys of his own choosing or by public defenders appointed by the General Prosecutor's Office when his own attorneys withdrew. The Commission does not agree with the petitioner's allegation that suggests that the right of substantive defense established in Article 8.2.d of the Convention is violated when a public defender is appointed to defend the interests of someone who of his own volition has been absent from the proceeding and whose private attorneys have declined to continue with his defense.

34. Finally, the Commission also fails to find any evidence indicating that the duration of the proceeding can be attributed to negligent or intentional conduct on the part of the authorities. On the contrary, the Commission notes that the complexity and multiplicity of allegations and individuals involved affected the duration of the case, given that the authorities had to respond to the motions filed by each of the defense attorneys and determine each accused's legal status with respect to various crimes. Other facts that affected the duration of the process were, on the one hand, the resistance of the accused, Ventura Rivas, who took flight once he learned of the arrest order against him and, on the other, the various attorneys for Ventura who withdrew from the case, forcing a halt in the case until a public defender was appointed. None of these factors can be attributed to the State.

35. Furthermore, the Commission finds that the petitioner does not establish facts that could amount to violations of the right to protection of one's honor and dignity established in Article 11 of the Convention.



36. Given the foregoing factual and legal considerations, the Commission rules that the instant case is inadmissible according to Article 47.b of the Convention, and accordingly agrees to publish this report immediately and include it in the Annual Report to the General Assembly of the OAS.

## V. CONCLUSION

37. By virtue of the factual and legal considerations presented above, the Commission concludes that the case under consideration meets the admissibility requirements established in Article 46 of the American Convention and, without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this petition inadmissible.
2. To notify the parties of this decision.
3. To publish this opinion and include it in the Commission's 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; Clare K. Roberts, Freddy Gutiérrez, Paolo G. Carozza and Víctor E Abramovich, Commissioners.