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Title/Style of Cause:	Alejandro Fiallos Navarro v. Nicaragua
Doc. Type:	Decision
Decided by:	President: Evelio Fernandez Arevalos; Second Vice-President: Florentin Melendez; Commissioners: Clare K. Roberts, Freddy Gutierrez Trejo, Victor E. Abramovich.
Dated:	20 July 2006
Citation:	Fiallos Navarro v. Nicaragua, Petition 799-04, Inter-Am. C.H.R., Report No. 59/06, OEA/Ser.L/V/II.127, doc. 4 rev. 1 (2006)
Represented by:	APPLCANT: Ivonne del Socorro Lacayo Leal
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I. SUMMARY

1. On August 31, 2004, the Inter-American Commission on Human Rights (hereinafter “the Commission”) received a petition presented by Ivonne del Socorro Lacayo Leal (hereinafter “the petitioner”) in which she alleged that the Republic of Nicaragua (hereinafter “the State”) had violated Articles 4, 7, 8, 11, 23, and 25 of the American Convention on Human Rights (hereinafter “the American Convention”) with respect to Alejandro Fiallos Navarro.

2. The petitioner claims that her husband, Mr. Alejandro Fiallos Navarro, ran for the office of mayor of Managua in 2004, representing a group of political parties called the Alliance for the Republic (APRE). As a result, he reportedly began to receive anonymous threats and was named in absurd legal complaints and lawsuits in which, she claims, the trial judges violated the rules of due process.

3. On August 16, 2004, he was convicted of Abuse of Authority and for Threats by the Second Local Criminal Judge. As a result of this conviction he was sentenced to a 45-day prison term, suspension of his political rights for a year, and a fine of two hundred cordobas. Consequently, he filed for a suspension of the execution of the judgment or conditional conviction and this remedy was admitted. At the start of these proceedings he was arrested – arbitrarily, since at that time, no legal warrant for his arrest had been issued. The petitioner also claims that the judgment by which he was convicted was carried out without ever having been notified or finalized, and that this was intended to disqualify him to run as a political candidate; all this took place with unwarranted delays in the legal deadlines set for the proceedings.

4. Ms. Maria Teresa Mairena Rayo (whose allegations were the reason behind the investigation and criminal prosecution of the alleged victim) withdrew her accusations against Mr. Fiallos on December 23, 2005, and offered an apology for the harm she had caused him. However, the probation period of 18 months imposed by the First Judge of Sentence Execution and Prison Oversight of Managua remained in effect from July 20, 2005.

5. The State, in its reply, provides a summary of all the legal proceedings and the legal analysis chapter of the case file reveals several irregularities that occurred in the proceedings.

6. After examining the parties' positions in light of the admissibility requirements set out in Article 46 of the American Convention, the Commission decides to declare this case admissible as regards Articles 7, 8, 23, and 25 of the American Convention, in conjunction with Article 1 and 2 thereof. Consequently, the Commission decides to inform the parties of this Admissibility Report, to make it public, and to include it in its Annual Report.

II. PROCESSING BY THE COMMISSION

7. The Commission received the original complaint on August 31, 2004, and recorded it as number 799/04. On January 31, 2005, the petitioner was asked to furnish additional information, and her reply was received on May 9 of that year. On August 16, 2005, the Commission conveyed the petition to the Government of Nicaragua, in compliance with Article 30 (2) and (3) of its Rules of Procedure. On October 21, 2005, the State responded to the complaint and, on October 31, its reply was sent to the petitioner for her comments, which were received on January 13, 2006. On January 23, 2006, the Commission forwarded additional information to the State. To date, no further information has been received from the parties.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioner

8. According to the petitioner, the alleged victim, her husband, Alejandro Fiallos Navarro, was a candidate for the post of mayor of the city of Managua, representing a grouping of political parties called the "Alliance for the Republic" (APRE), in the elections of November 7, 2004. Days after announcing his candidacy, he reportedly began to be targeted on account of his status as a politician, and a series of lawsuits, based on complaints she describes as "absurd," were initiated against him. She believes that there were irregularities in these criminal proceedings that constituted violations of the alleged victim's rights and guarantees, and that all of this was intended to deny him the right of being elected to public office.

9. The first of these criminal trials was heard, at the first instance, by the Second Local Criminal Court (case file 1218/04), substitute judge Moisés Rodríguez Zelaya presiding. The petitioner reports that the alleged victim appeared before this court on August 17, 2004, accompanied by his attorney, as he had been summoned to "expand" on his statements in his capacity as the accused; however, the Law on Criminal Proceedings Law contains no provisions regarding the "expansion" of investigations.

10. While at the premises of the court in response to this request, they were violently accosted by police officers, who allegedly locked the door and then forcibly apprehended, arrested, and handcuffed the alleged victim. The petitioner claims, however, that as of that time he had not been informed of any conviction handed down against him, as a result of which his arrest was arbitrary. He was only notified of the judgment after his defense lawyer filed a protest. However, the arrest warrant was officially issued by Judge Moisés Rodríguez Zelaya half an hour after his detention.

11. The petitioner claims the right to appeal to a higher court was violated in that the judgment was carried out without notice of it having being served, as a result of which the alleged victim was denied the material opportunity to appeal against it. In conclusion, the judgment that was carried out was not yet final. In this regard, the Law on Criminal Proceedings states that:

Art. 495: Local judges shall carry out the judgments handed down in summary criminal trials when no appeals are filed against them within the deadline set by law, or when the District Judge returns the case file with the certification that the sentence has been executed.

Art. 499: All criminal judgments shall be executed within 48 hours after notice of them has been served, except in those cases that are expressly excepted by law.

12. The petitioner reports that the alleged victim immediately appealed, but that the appeal was not processed because Judge Rodríguez Zelaya had taken the case file home with him. The next day, however, August 18, 2004, the law of the alleged filed an appeal, which was admitted the following day and as a result of which execution of the judgment was suspended. Processing of the appeal began and, in accordance with the deadlines set in law, the second-instance judgment was due on or before August 26; however, as of the date the petition was lodged with the Commission, no decision had yet been handed down.

13. Nevertheless, because of his arbitrary arrest, the alleged victim filed for a “personal exhibition” or habeas corpus remedy on August 18, 2004; reportedly, however, the Court of Appeals has not ruled on the merits, stating that it does not have competence to do so. The petitioner has not specified the grounds for the lack of competence invoked by the Appeals Court.

14. The petitioner maintains that under Article 61 of the Amparo Law in force in Nicaragua, the judge in charge of executing the judgment was required to order Mr. Fiallos Navarro’s release since he was being held illegally.

Art. 61: The Judge who executes the judgment, during the proceedings or outside them, taking into account the explanations given by the interested party and the applicable legal provisions, shall proceed in accordance with the following rules:

(3) If the person holding another is the competent authority, but if proceedings have not begun or if the arrest warrant has not been served in accordance with law or if the imprisonment order has not been given in accordance with law, the Judge who executes the judgment shall

order his or her release, on bail ... [garbled] ... document before the same Judge who executes the judgment. In cases not covered by these three situations, the judge shall issue an order for the proceedings to continue their course.

15. In addition, the petition lodged with the Commission claims that although Mr. Fiallos Navarro was legally entitled to release on bail that right was denied to him by Judge Moisés Rodríguez Zelaya at the first instance court level. The Code of Criminal Procedure provides that:

Art. 336: If the accused provides monetary bail or renders a solemn oath in those cases in which it is permissible, he or she may be released.

16. Additionally, the petitioner states that the alleged victim was arbitrarily deprived of his liberty when the First Criminal District Judge of Managua, on appeal, ordered his release on bail. This arrest reportedly began on August 17, 2004 and concluded on the 24th of that same month.

17. At trial, the alleged victim was convicted of Abuse of Authority and Threats. The verdict[FN1] of August 16, 2004, had sentenced him to an incommutable prison term of 45 days and a fine of one hundred cordobas for the latter charge, while the conviction for abuse of authority had entailed the suspension of his political rights[FN2] for a period of one year and a fine of one hundred cordobas. As a consequence, he filed for a suspension of the execution of the sentence or a conditional conviction. This was granted with respect to the arrest, but the suspension of his political rights was left in effect. On June 10, 2005, however, in a later action, the Criminal Chamber (No. 1) of the Managua Court of Appeals[FN3] upheld the request for a conditional conviction and ruled that the matter be referred back to the first instance court judge for him to determine the applicable period for the introduction of evidence. However, on the day of the 2004 election for the office of mayor of Managua, the punishment imposed on Mr. Fiallos Navarro, which suspended his political rights, was still in force.

[FN1] Judgment No. 284 of August 16, 2004, by the Second Local Criminal Judge.

[FN2] Under Nicaraguan criminal law, the punishment of "suspension of political rights" entails: (1) the loss of any public position held by the convict; (2) disqualification from securing public employment during the term of the suspension; (3) suspension, during the term of the disqualification, of the right to request retirement or other similar services.

[FN3] Judgment of the Court of Appeals, Managua District, Criminal Chamber No. 1, June 10, 2005, case file 692/04.

18. The petitioner maintains that all domestic remedies have been exhausted since summary criminal trials are not subject to cassation (i.e. a third level of judicial review), and despite the fact that the alleged victim was released on bail, there was an unwarranted delay on the part of the Nicaraguan judicial authorities in the conduct of the proceedings.

19. In a later submission to the Commission, the petitioner claims that the trial judge publicly threatened Mr. Fiallos with again having him arrested without a judicial warrant. All of this was presumably intended to weaken the alleged victim politically as a candidate for the office of

Mayor of Managua. As a result of this situation the recusal of the trial judge was attempted, but such acts were not successful.

20. In addition, the Commission was given a list of the criminal prosecutions in which the alleged victim was implicated. The first[FN4] involved a 2003 case in which María Fernanda Flores de Alemán filed an accusation for the crimes of defamation and slander. In the second, heard by the Second Local Criminal Judge of Managua, he was convicted, in the absence of any evidence whatsoever, to a prison term of 45 days and to a one-year suspension of his right to hold public office.[FN5]

[FN4] Case No. 798-0221-03. Third Local Criminal Judge.

[FN5] Judgment No. 284 of the Second Local Criminal Judge of Managua, August 16, 2004.

21. They maintain that the grounds for these criminal investigations and prosecutions were essentially political in nature and not legal, and that all this comprises a series of grave violations of the American Convention on Human Rights.

B. State

22. In its reply dated October 21, 2005, the State of Nicaragua provided an itemization and analysis of the proceedings in which Mr. Alejandro Fiallos Navarro was involved. This submission, signed by the Ministry of Foreign Affairs, provides the following information:

The submission states that the proceedings in which the alleged victim was convicted began after a complaint was filed by Ms. María Teresa Mairena Reyes[FN6] on July 20, 2004. In addition to Mr. Fiallos, the proceedings named four additional persons for the crimes of abuse of authority and threats.

The submission reports that in a deed dated July 23, 2004, the judge summoned the accused to provide statements for the investigation. On August 16, 2004, convictions were handed down against them for the aforesaid charges plus the crime of extortion, which was added by the trial judge on an ex-officio basis earlier in the proceedings. Later, in a ruling dated November 26, 2004, the first-instance judgment was amended to acquit all the accused with the exception of Mr. Fiallos Navarro. Unlike the others, he was acquitted of the crime of extortion, but his conviction was upheld for the offenses of abuse of authority and threats, and he was sentenced to a 45-day incommutable prison term and a fine of one hundred cordobas, payable to the State, for the latter, while for the former offense he was sentenced to a one-year suspension of his political rights and a fine of one hundred cordobas. Mr. Fiallos's defense then filed for a suspension of execution of sentence or conditional conviction, which was granted as regards the arrest but not in connection with the suspension of his political rights. The suspension of the execution of sentence or conditional conviction for the suspension of his political rights was granted on June 10, 2005, by Criminal Chamber No. 1 of the Court of Appeals of Managua.[FN7]

[FN6] In the written reply furnished by the State on October 21, 2005, this person's name sometimes appears as "Reyes" and on other occasions as "Rayo".

[FN7] In other words, when the 2004 Managua mayoral election took place, Mr. Fiallos's absolute disqualification sentence was still in effect, meaning that he was unable to hold public office.

23. In the State's view, it is clear that the complaint and subsequent charges brought by Ms. Maria Teresa Mairena Rayo indicate that the incident was based on a contract or working relationship between her and the Nicaraguan Industry and Development Institute (INIFOM), of which Mr. Fiallos was the Director, and, in addition, that it is also evident that the complainant identified herself on different occasions in different fashions, which indicates a lack of care on the part of the judicial authorities that heard the case, in that they failed to determine the identity of the complainant.[FN8]

[FN8] Comments document submitted by the State of Nicaragua on October 21, 2005, p. 6.

24. Nicaragua also points out that the judicial officials failed to pursue several procedures that they were required to carry out. It notes that Mr. Fiallos Navarro's defense lawyer was denied the possibility of filing for recusal lodged in accordance with law, on the grounds that "it is to be filed by the principal in the dispute and not by his attorney or counsel,"[FN9] thereby denying the lawyer's representative capacity in all procedural undertakings and ruling that the party to the action was Mr. Fiallos Navarro and not his attorney.

[FN9] Ibid.

25. Similarly, the State underscores the fact that the case file contains a notice of the phase of the proceedings for the introduction of evidence that was served on the public prosecutor's office, but no record of any such notification given to Mr. Fiallos Navarro's defense counsel. Nicaragua acknowledges that under its law, this situation is grounds for nullification of the proceedings and "violates the right of defense,"[FN10] and that this situation was never remedied by either the first- or second-instance judicial authorities.

[FN10] Ibid., p. 7.

26. According to the State, the presumption of innocence was violated, as was the right of defense and the right to be judged swiftly by a competent court, all of which are enshrined in Article 34 of the Nicaraguan Constitution. The State further notes that the dispute placed before the criminal judge was a labor matter, and so the question was not heard by its natural judge and, additionally, the maxim that the criminal law is the last resort was ignored.

27. Nicaragua admits that guarantees of due process were denied: bail was not granted at the first instance, as provided for by law; no notice was served regarding the opening of the phase of the reception of evidence; the first-instance recusal was not admitted; and when processing of the recusal began, the request was dismissed on absurd non-legal grounds, stating that the defense counsel was not a party to the proceedings.[FN11]

[FN11] Paragraph 24.

28. The State also maintains that the right to personal liberty was violated in that, although a first-instance conviction was handed down against Alejandro José Fiallos Navarro (the alleged victim), Haydeé Acosta Chacón, Edgard Bohórquez, and Patricio Ramón Escobar Altamirano, and that this ruling, since notice had not yet been served, was not yet final, the Second Local Criminal Judge of Managua issued a warrant for the arrest of those who had been convicted, but that it was only carried out with respect to Mr. Fiallos Navarro, who was held in prison from August 17 to 24, 2004.

29. The State also notes that “between August 17 and 19, 2004, five accusations were filed against Mr. Alejandro Fiallos Navarro, the first two arising from complaints lodged by the same judge who convicted him. The other three accusations were made by other individuals involved in the same conflict. The August 17th accusations by Judge Moisés Rodríguez were made the same day that he ordered the arrest warrant to be issued against Mr. Fiallos, when Mr. Fiallos appeared in Court for the notification of the judgment.”[FN12]

[FN12] Comments document submitted by the State of Nicaragua on October 21, 2005, p. 9.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY A. Preliminary considerations

30. The Commission notes that the State, in its reply to the petition, acknowledges that judicial guarantees were violated in the legal proceedings brought against Mr. Fiallos Navarro. Thus, the State affirms that “from an apparently formal point of view, the judiciary appeared to comply with every stage of the procedure; however, there is evidence to indicate otherwise”[FN13] and the case file says it is “shown that Alejandro Fiallos Navarro’s defense attorney was not notified of the initiation of the evidentiary stage of the proceedings... [a circumstance that] violates the right of defense.”[FN14]

[FN13] Ibid., p. 6.

[FN14] Ibid., p. 7.

31. Similarly, the Commission will give consideration to the State's claim that the alleged victim "was denied his natural judge"[FN15] in that the issue that was pursued through the criminal courts was essentially a labor matter. It will also bear in mind the State's admission that "of all those prosecuted and convicted by Judge Moisés Rodríguez, the only person who was imprisoned was Mr. Alejandro José Fiallos Navarro" in spite of the fact that the "judgment ... [of] August 16 was neither res judicata nor a finalized ruling..."[FN16]

[FN15] Ibid.

[FN16] Ibid.

32. It will also take into account, in ruling on the admissibility of this petition, that according to the State, Mr. Fiallos Navarro was allegedly named in several criminal complaints, two of which arose "from complaints lodged by the same judge who convicted him."[FN17]

[FN17] Ibid. p. 9.

33. These elements will be taken into account in determining the prima facie existence of a possible violation, but this shall in no way constitute a prejudgment on the merits of the case.

B. Competence

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

34. The petitioner is entitled, under Article 44 of the Convention, to lodge complaints with the Commission. The petition names, as the alleged victim, Mr. Alejandro Fiallos Navarro; consequently, the Commission has competence *ratione personae* to examine the complaint. As regards the State, Nicaragua ratified the American Convention on September 25, 1979.

35. The Commission has competence *ratione loci* to consider the petition since it alleges violations of rights protected by the American Convention occurring within the territory of a state party thereto.

36. The Commission 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.

37. Finally, the Commission has competence *ratione materiae* since the petition describes violations of human rights that are protected by the American Convention.

2. Exhaustion of domestic remedies

38. Article 46(1) (a) of the American Convention states that, for a complaint lodged with the Inter-American Commission in compliance with Article 44 of the Convention to be ruled admissible, the remedies available under domestic law must have first been pursued and exhausted in accordance with generally recognized principles of international law. This requirement is intended to facilitate the examination of the alleged violation of a protected right by the domestic authorities and, if appropriate, to resolve it before it is brought before an international body.

39. The prior exhaustion requirement applies when the national system does, in fact, offer available resources that are adequate and effective for remedying the alleged violation. Thus, Article 46(2) stipulates that the requirement need not be observed when domestic legislation does not afford due process of law for the protection of the right in question, if the alleged victim was denied access to the remedies offered by domestic law, or if there was an unwarranted delay in issuing judgment under these remedies. As stated in Article 31 of the Commission's Rules of Procedure, when the petitioner invokes one of those exceptions, it falls to the State to demonstrate that the domestic remedies have not been exhausted, unless that fact is clearly evident from the record.

40. In the present case, the petitioner claims that the judgment of June 10, 2005, by the Court of Appeals of Managua, exhausted domestic remedies and the State has not disputed that claim. The Commission, therefore, concludes that the requirement of the prior exhaustion of domestic remedies has been satisfied.

3. Filing period

41. As provided for in Article 46(1) (b) of the Convention, for a petition to be admitted, it must have been lodged within a period of six months following the date on which the petitioner was notified of the final judgment of the domestic court. The six-month rule guarantees certainty and legal security once a decision has been made.

42. As regards the instant petition, the Commission has established that domestic remedies were exhausted with the June 10, 2005 ruling from the Court of Appeals of Managua and that the petition was lodged with the Commission on August 31, 2004. Consequently, the Commission concludes that this requirement has been satisfied.

4. Duplication of international proceedings and res judicata

43. The case file does not indicate that the substance of the petition is pending in any other international settlement proceeding or that it is substantially the same as another petition already examined by this Commission or any other international body. Hence, the requirements set forth in Articles 46(1) (c) and 47(d) of the American Convention have been met.

5. Characterization of the alleged facts

44. To determine admissibility, the Commission must decide whether the petition describes facts that could tend to establish a violation, as required by Article 47(b) of the American Convention.

45. The standard of evaluation regarding the admissibility of a petition is different from that which applies in deciding on the merits of a complaint. The Commission must conduct a prima facie assessment to determine whether the complaint entails an apparent or potential violation of a right protected by the Convention and is not at this stage establishing the existence of such a violation. This examination is a summary analysis that does not prejudge the merits or offer an advance opinion on them.[FN18]

[FN18] IACHR, Report No. 21/04, Petition 12.190, Admissibility, José Luis Tapia González et al., Chile, February 24, 2004, paragraph 33.

46. The Commission does not find this petition to be “manifestly groundless” or “obviously out of order.” Consequently, the Commission considers that, prima facie, the petitioner has met the burden established by Article 47(b) and (c).

47. The claims alleging violations of judicial guarantees committed with respect to Mr. Fiallos have been acknowledged by the State of Nicaragua in its reply. All of this reportedly took place within the context of the alleged victim’s candidacy for the position of mayor of Managua and ultimately led to his absolute disqualification from public office. That could have meant the frustration of any political ambition entertained by Mr. Fiallos at the time he was a candidate for the office of Managua city mayor. In addition, according to information furnished by the State, he was reportedly judged and convicted by the same judge who had lodged the complaint against him and who later issued the arrest warrant pursuant to which he spent several days in prison. Similarly, the alleged victim lodged several legal remedies intended to protect his rights; they were not, however, resolved on a timely basis or in an appropriate fashion.

48. Since the State’s reply concurs with the petitioner’s complaint, the Commission calls on the parties to consider the possibility of initiating a friendly settlement procedure to resolve this matter.

49. In consideration of the above, the Inter-American Commission believes that, if the described facts are proven true, they could constitute violations of the Convention. The irregular arrest that Mr. Fiallos reportedly suffered could constitute a violation of Article 7 of the American Convention. The irregular procedures in the prosecution of the alleged victim, if proven true, could constitute a violation of Article 8. The alleged violation of Article 23 of the American Convention could exist if it is shown that, as a result of his criminal prosecution and the penalties imposed on him, he was unjustly disqualified from participating in the Managua mayoral election; and, in addition, if it is shown that he filed the domestic remedies suitable for protecting his rights and that those rights were not effectively protected, a violation of Article 25 of the American Convention could be involved.

50. As regards the petitioner's allegation that Articles 4 and 11 of the American Convention were violated, the Commission fails to find adequate grounds for ruling the instant petition admissible with respect to those articles.

51. The Commission, invoking the principle of *iura novit curia*, will analyze the possible violations in conjunction with the general obligations set out in Articles 1 and 2 of the American Convention.

V. CONCLUSIONS

52. Based on the foregoing considerations of fact and law, and without prejudging the merits of the case, the Commission concludes that the instant case satisfies the admissibility requirements set out in Article 46 of the American Convention.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this petition admissible as regards the rights enshrined in Articles 7, 8, 23, and 25 of the American Convention, in conjunction with Articles 1 and 2 thereof.
2. To notify this decision to the State and to the petitioner.
3. To invite the parties to consider the possibility of initiating a procedure with a view to the friendly settlement of the case, and to make itself available to the parties for that purpose.
4. To publish this decision and to include it in its Annual Report, to be presented to the General Assembly of the OAS.

Done and signed in the city of Guatemala, Guatemala, on the 20th day of the month of July 2006. (Signed): Evelio Fernández Arévalos, President; Florentín Meléndez, Second Vice-president; Clare K. Roberts, Freddy Gutiérrez Trejo, and Víctor E. Abramovich, Commissioners.