

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 102/06; Petition 97-04
Session: Hundred Twenty-Sixth Regular Session (16 – 27 October 2006)
Title/Style of Cause: Miguel Ricardo de Arriba Escola v. Honduras
Doc. Type: Decision
Decided by: President: Evelio Fernandez Arevalos;
First Vice-President: Paulo Sergio Pinheiro;
Second Vice-President: Florentin Melendez;
Commissioners: Freddy Gutierrez, Paolo Carozza, Victor Abramovich.
Dated: 21 October 2006
Citation: de Arriba Escola v. Honduras, Petition 97-04, Inter-Am. C.H.R., Report No. 102/06, OEA/Ser.L/V/II.127, doc. 4 rev. 1 (2006)

Terms of Use: Your use of this document constitutes your consent to the Terms and Conditions found at www.worldcourts.com/index/eng/terms.htm

I. SUMMARY

1. On February 11, 2004, Mr. Miguel Ricardo De Arriba Escolá, a Spanish citizen residing in Honduras (hereinafter “the petitioner”) lodged a petition with the Inter-American Commission on Human Rights (hereinafter the “Commission,” the “Inter-American Commission,” or the “IACHR”) against the State of Honduras (hereinafter “the State” or “the Honduran State”) wherein he alleged that various State organs and institutions, among them the Supreme Court of Justice, the Public Prosecutor’s Office, the Police, the National Human Rights Commissioner and the National Anti-Corruption Board, had abstained from ruling or deciding on the complaints that he had filed with these State bodies on a variety of issues, and in so doing had violated the American Convention on Human Rights (hereinafter the “American Convention” or the “Convention”) as well as other international instruments.

2. The petitioner alleges that he filed complaints with various governmental agencies and judicial bodies in Honduras, yet none of his complaints has been resolved. He contends that the Honduran State has thus violated his right to justice. The petitioner filed a complaint with the IACHR on November 11, 2004, to the effect that he had been expelled from Honduras on July 4, 2004. The petitioner alleges that his right of defense was violated.

3. The State, for its part, asks that the Commission declares the present petition inadmissible on the grounds that the petitioner did not exhaust the remedies under domestic law, as required under Article 46 (1)(a) of the American Convention. The State argues that Mr. De Arriba was not denied his right to obtain justice. It recounts the steps taken by the various authorities in response to the complaints that the petitioner filed.

4. After examining the positions of the petitioner and the State, the Commission decides that the case is inadmissible under articles 46 and 47 of the American Convention. The Commission also decides to publish the present report in the Commission's Annual Report to the OAS General Assembly and to notify both parties.

II. PROCESSING WITH THE INTER-AMERICAN COMMISSION

5. The Commission received the petition on February 11, 2004, and assigned it number 97/04. On November 12, 2004, the petitioner reported that he had been expelled from Honduran territory. That information was forwarded to the State on December 13, 2005. On January 20, 2006, the State requested an extension to file its response. It was granted a 30-day extension on January 26, 2006. On February 27, 2006, the State filed its response, which was forwarded to the petitioner on March 21, 2006. The petitioner's observations on the State's response were received on April 20, 2006, and were forwarded to the State on May 26, 2006. That same day, the State requested an extension to answer the petitioner's observations. The State was given a one-month extension on June 1, 2006. The State's observations were received on June 26, 2006 and forwarded to the petitioner on July 10, 2006. The petitioner's observations were received on August 3, 2006.

III. POSITIONS OF THE PARTIES

A. The petitioner

6. Concerning the alleged denial of justice on the part of the Honduran authorities, the petitioner contends that he filed a series of complaints with various authorities of the Honduran State, as follows:

a. A complaint against the Banco Continental for usurpation of functions, abuse of authority and discrimination on the basis of nationality, on the grounds that the bank in question had allegedly refused to give the petitioner's wife a loan.[FN1]

b. A complaint against Ángel Rafael Herrera Chinchilla, Norman Edilberto Serrano Leiva and Olga Tatiana Arteaga Rivera, on the grounds that in the course of oral proceedings in a civil case against Mr. De Arriba, at the urging of Mr. Herrera Chinchilla, Mr. Serrano Leyva and Ms. Arteaga Rivera were asked whether they were personally aware that Mr. De Arriba did not offer sufficient collateral and whether, because of the legal action, there was well founded fear that the petitioner would conceal his assets so as not to have to make good on his obligations to the Banco Financiera Comercial Hondureña S.A (FICOHSA). In his complaint the petitioner states that he has no idea which persons were summoned to appear as witnesses and that these individuals had therefore perjured themselves.[FN2]

c. A complaint against the firm INFOCOM because it refused to supply the petitioner with the information it had in its database about the petitioner, which the petitioner alleged violated his right to personal honor, to personal and family privacy and to his reputation.[FN3]

d. A complaint against the municipality of Tegucigalpa based on the fact that the petitioner purchased a vehicle from the Corporación Flores in the city of San Pedro Sula (although the car was registered in Tegucigalpa) and the municipal fee to register the vehicle in Tegucigalpa had allegedly increased 338.46%. The petitioner believed this increase was a violation of Article 109

of the Constitution, which provides that taxes shall not be confiscatory. The petitioner therefore asked the San Pedro Sula Public Prosecutor's Office to "challenge the municipal vehicle registration fee charged by the Municipality of Tegucigalpa and to challenge any type of fee that said Municipality seeks to charge me, as I am not a resident of Tegucigalpa".[FN4]

e. A complaint against the Private Contributions System [Régimen de Aportaciones Privadas] (R.A.P.) alleging denial of a right, and against the BGA broker alleging calumny, because a loan application that the petitioner's wife filed with R.A.P. was denied based on a report that showed her to be in default to a credit card issuer.[FN5]

f. A complaint against the Corporación Flores alleging the crime of fraud. In the complaint the petitioner alleges, inter alia, that: i) the second day after he purchased a vehicle from the Flores Corporation he had to leave it in the auto repair shop; ii) he had to take out insurance with the Flores Corporation, which he stopped paying when, because of an accident the petitioner had, the insurance company would not pay to have his car repaired; iii) the person who sold him the vehicle did not advise him that the car would be registered in Tegucigalpa, and not in San Pedro Sula where the petitioner lived; iv) on January 13, 2004, the police confiscated the car, acting on a court order sought by the Flores Corporation.[FN6]

g. A complaint against HONDUCOR or the staff of the Presidential House, alleging mail tampering. The petitioner alleges that he sent a letter to the President of the Republic via certified mail; nine days later he had still not received acknowledgement that the letter had been received; he learned through a third party that the President had not received his letter.[FN7]

h. A complaint against the Corporación Flores alleging coercion; the petitioner contends that the contract he signed in 2001 when he purchased a car from the Flores Corporation was one of undisputed acceptance of the terms of the contract, set unilaterally by the Flores Corporation; he alleged that he was forced to sign the contract without making any change to it. Among the facts alleged are the following: i) one of the clauses of the contract requires the buyer to pay interest of 3% monthly, which the petitioner considers to be usury; ii) the petitioner contends that while he did fall behind in his payments, he explained the reason for the delay and reached an oral agreement with the company representatives, which they then ignored. In the complaint the petitioner is asking the Public Prosecutor's Office to rescind his contract with the Flores Corporation, which he contends is a "one-sided" contract.[FN8]

i. A complaint against HONDUTEL alleging fraud, since the telephone company charged him for various months during which his telephone service was suspended because he had stopped paying for the phone until a claim he had previously filed was sorted out.[FN9]

j. A complaint against the Compañía Financiera which, he claimed, charged him usurious interest on a loan it had made to the petitioner.[FN10]

k. A complaint against the business called Escuela Rinalba, where the petitioner's children were students, based on the following: i) the school charged him a fee for the computer lab that two years later was still not up and operating; ii) that the tuition fees and monthly fees had increased on average 22% a year; iii) that the teachers at the school did not have the credentials necessary to give classes, and other claims.[FN11]

l. A complaint for the theft of a computer and other property from his home.[FN12]

m. A complaint against the Police and the Public Prosecutor's Office for denying him assistance, since neither the police nor the public prosecutor's office solved the robbery or the other complaints he had filed alleging fraud and usury.[FN13]

n. A complaint against the Attorney General of the Nation, the Minister of Security and the National Human Rights Commissioner, claiming that by their failure to solve or settle the above-listed complaints they had denied him justice.[FN14]

[FN1] According to a copy of the complaint filed with the Office of the Special Prosecutor for Consumer Protection, October 16, 2003.

[FN2] According to a copy of the complaint filed with the Office of the Special Prosecutor for Consumer Protection, September 26, 2003.

[FN3] According to a copy of the complaint filed with the Office of the Special Prosecutor for Consumer Protection, September 11, 2003.

[FN4] According to a copy of the complaint filed with the Office of the Special Prosecutor for Consumer Protection, August 25, 2003.

[FN5] According to a copy of the complaint filed with the Office of the Special Prosecutor for Consumer Protection, June 24, 2003.

[FN6] According to a copy of the complaint filed with the Office of the Special Prosecutor for Consumer Protection, January 28, 2004

[FN7] According to a copy of the complaint filed with the Office of the Special Prosecutor for Consumer Protection, January 17, 2003.

[FN8] According to a copy of the complaint filed with the Office of the Special Prosecutor for Consumer Protection, July 25, 2002.

[FN9] According to a copy of the complaint lodged with the Office of the Special Prosecutor for Consumer Protection , May 20, 2002.

[FN10] According to a copy of the complaint lodged with the Office of the Special Prosecutor for Consumer Protection, April 10, 2002.

[FN11] According to a copy of the complaint lodged with the Departmental Office of Education on September 24, 2001, and the complaint lodged with the Office of the Special Prosecutor for Consumer Protection , September 14, 2001.

[FN12] According to a copy of the complaint lodged with the Secretariat of Security- General Bureau of Criminal Investigation, September 2, 2001.

[FN13] According to a copy of the complaint lodged with the Office of the National Human Rights Commission, May 14, 2002 .

[FN14] According to a copy of the complaint lodged with the Secretariat of the Supreme Court, April 7, 2003.

7. The petitioner alleges that he did not exhaust local remedies because he was not notified of the decisions on the complaints he brought; he further asserted that he did not exercise his right to file a claim since, when he addressed the Attorney General on February 12, 2003 and February 13, 2004, the only response he received was “a series of threats delivered by Mr. Denis Starkman, assistant to the Attorney General.” The petitioner claims to have reported these threats to the National Human Rights Commissioner on February 13, 2006. Finally, he explained that he was unable to exhaust the remedies under domestic law because he was expelled from Honduras on July 4, 2004.

8. Concerning his expulsion from Honduran territory, the petitioner states that on July 3, 2004, he was summoned to a hearing by the Migration Policy Office, which is attached to the Secretariat for Government and Justice. That hearing was used as an opportunity to take him into custody and expel him from the country in the early morning hours of July 4, 2004. He was not assisted by counsel during his expulsion and had not been told in advance that he was about to be deported.

B. The State

9. The State, for its part, reports that the complaints filed by the petitioner were duly addressed by the corresponding authorities.

10. The State reports that the complaint lodged with the National Human Rights Commissioner was referred to the Office of the Northern Regional Delegation, since the facts alleged were said to have occurred in San Pedro Sula. That Office conducted the appropriate inquiries into the three cases reported. The results were as follows:

a. The complaint against the Office of the Special Prosecutor for Consumer Protection, alleging that Office's failure to address the petitioner's complaint against the Rinalba School: CONADEH's complaints investigator and the Office of the Special Prosecutor for Consumer Protection agreed to conduct the inquiries jointly and to that end made an inspection of the school and spoke with school administrators. They obtained a copy of the February 5, 2003 administrative order wherein the Office of the Special Regional Prosecutor for Consumer Protection and Senior Citizen Affairs ordered that the complaint brought against the Rinalba School be closed. That decision also ordered that Mr. De Arriba be notified of the outcome and of the remedies available to him, including the possibility of a civil case. The foregoing notwithstanding, Mr. De Arriba did not avail himself of the legal remedies to challenge the decision.

b. The complaint against the Office of the Special Prosecutor for Consumer Protection, for not having settled the complaint that the petitioner lodged against the Compañía Financiera, S.A. COFISA, for charging usurious interest. The investigator from the Office of the Human Rights Commission found that a memorandum had also been sent to the Deputy Attorney General to have that office instruct the Superintendent of Banks, Insurance and Financial Institutions to get information about the Compañía Financiera (COFISA) and about the interest rate financial institutions were authorized to charge on loans to the public and chattel mortgages; the National Banking and Insurance Commission was to check whether the interest that Mr. De Arriba Escolá was being charged was legal. The Attorney General's Office concluded that the facts of the case did not qualify as crimes and decided to shelve the complaint.

c. The complaint against the Bureau of Criminal Investigation for its alleged failure to investigate the theft that occurred at Mr. De Arriba's home on September 2, 2001. The investigator found that the complaint had not been addressed. Therefore, on June 28, 2002, a memorandum was sent to the person in charge of the Robbery Division, instructing him to appoint a detective to investigate Mr. De Arriba's complaint. On July 18, 2002, the detective assigned to investigate the theft called the Regional Delegate for the Northern Zone and informed him that the party who filed the complaint would have to give him a statement as the aggrieved party. The detective gave the Regional Delegate the petitioner's phone number. The

Regional Delegate for the Northern Zone called the petitioner's phone number on July 25, 2002, but was informed that the number had been disconnected

11. The State asserts that the National Human Rights Commissioner promptly investigated the complaints filed by Mr. De Arriba; hence, the latter cannot make the claim that he was denied justice. Although the results were not those that the petitioner had anticipated, the appropriate steps were taken.

12. As for the complaints filed with the Office of the Special Prosecutor for Consumer Protection and Senior Citizen Affairs, the State adds that in the complaint he filed with the Commission the petitioner himself acknowledges that he received a memorandum on March 5, 2003. The State alleged that the memorandum contained information on the complaints Mr. De Arriba had filed and the following information on the status of the proceedings into the complaints the petitioner had filed with that office:

- a. Against the Rinalba School, for fraud and coercion: Closed on February 6, 2003.
- b. Against the Compañía Financiera S.A, for usury: Filed or closed on September 9, 2005.
- c. Against HONDUTEL, for unlawfully charging service fees. Under investigation.
- d. Against the Flores Corporation, for coercion: Closed on June 28, 2003.
- e. Against HONDUCOR, for mail tampering: Closed on March 21, 2003.
- f. Against the San Pedro Sula Municipality, for unlawful charges: Filed on August 31, 2003.
- g. Against INFOCOM, for calumny. Filed on September 12, 2003.
- h. Against Rafael Herrera for perjury. Filed, as the crime involved was of a private nature, under Art. 27 of the Code of Criminal Procedure.

13. The State contends that the foregoing demonstrates that the Office of the Special Prosecutor for Consumer Protection addressed the complaints the petitioner filed.

14. The State also contends that the Supreme Court had issued a report on the complaint that Mr. De Arriba filed, in which it found that the petitioner's complaint was not within that Court's jurisdiction.

15. As to the alleged complaints filed with the Office of the Attorney General on February 12, 2003, and February 13, 2004, as a consequence of which the petitioner filed a complaint with the National Human Rights Commissioner against Mr. Denis Starkman, those complaints are not in the archives of the Office of the Human Rights Commissioner.

16. The State further asserts that in response to the complaints the petitioner filed with the Office of the Special Prosecutor for Consumer Protection, the latter had to institute administrative, complaint-related inquiries with such institutions as HONDUTEL, HONDUCOR, the Municipality of San Pedro Sula, as required under the General Public Administration Act.

17. Furthermore, the State reasons that it was three years ago that the petitioner learned of the decisions that he subsequently denounced to the Secretariat of the Supreme Court, to the

National Human Rights Commission and to the IACHR, which means that the petitioner allowed the six-month period stipulated in Article 46(1)(b) of the American Convention to lapse.

18. For all the foregoing reasons, the State is requesting that the present petition be declared inadmissible on the basis of Article 46 (1)(a) of the American Convention.

IV. ANÁLISIS

A. The Inter-American Commission's jurisdiction *ratione personae*, *ratione loci*, *ratione temporis* and *ratione materiae*

19. Under Article 44 of the American Convention, the petitioner does have standing to lodge petitions with the IACHR. As for the State, the Commission notes that Honduras has been a party to the American Convention since September 5, 1977, the date on which it deposited the respective instrument of ratification. The Commission therefore has jurisdiction *ratione personae* to examine the petition.

20. The Commission has jurisdiction *ratione loci* to take up the petition, as it alleges violations of rights protected under the American Convention, said to have occurred within the territory of a State Party to the Convention. The Commission also has jurisdiction *ratione temporis* since the obligation to respect and ensure the Convention-protected rights was already in effect for the State at the time the facts alleged in the petition were said to have occurred. Finally, the Commission has jurisdiction *ratione materiae* because the petition denounces violations of human rights that are protected by the American Convention.

B. Other admissibility requirements

1. Characterization of the facts alleged

21. Article 47(b) of the American Convention provides that the admissibility of a petition lodged with the Commission will hinge on whether it states facts that tend to establish a violation of the rights guaranteed by the Convention.

22. From its analysis of the facts the petitioner alleges in the situations described under a), b), c), d), e), f), g), h), i), j), k), l), m) and n) of section III (A) (6) of this report, the Commission finds that, *prima facie*, the allegations do not tend to establish violations of the American Convention.

23. Moreover, the petitioner has not adequately substantiated his charges alleging that the authorities failed to respond to his complaints. Moreover, after examining the information supplied by the petitioner and by the State, the Commission observes that there was follow-up to the petitioner's complaints. Therefore, the facts he alleges do not constitute violations of the American Convention.

24. The Commission concludes that the petitioner's substantiation of a possible violation of the American Convention is one of the admissibility requirements under Article 47(b) of the

American Convention. Given his failure to satisfy that requirement, the Commission is obliged to declare the petition inadmissible with regard to the situations described under a, b, c, d, e, f, g, h, i, j, k, l, m and n of section III (A) (6) of this report, as they do not state facts that tend to establish a violation of the rights guaranteed by the Convention.

25. The Commission considers that, *prima facie*, the petitioner's allegation concerning his deportation from Honduran territory does tend to establish a violation of articles 22, 8 and 25 of the American Convention.

2. Exhaustion of the remedies under domestic law

26. Article 46(1)(a) of the American Convention provides that for a petition lodged with the Inter-American Commission in accordance with Article 44 of the Convention to be admissible, the remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to give the national authorities an opportunity to take cognizance of the alleged violation of a protected right and, if appropriate, correct it before it is taken up by an international forum.

27. The rule requiring prior exhaustion of domestic remedies is applicable when the domestic system affords remedies that are adequate and effective to address the alleged infringement of a legal right. Article 46(2) stipulates that the requirement does not apply when the domestic legal system does not afford due process of law to protect the right in question, or when the alleged victim does not have access to the remedies under domestic law, or when there is an unwarranted delay in rendering a final judgment under the aforementioned remedies. As Article 31 of the Commission's Rules of Procedure provides, when the petitioner invokes any of these exceptions, it is up to the State to demonstrate that there are internal remedies that have not been exhausted, unless that is clear from the record.

28. The principles of international law, as reflected in the precedents established by the Commission and the Inter-American Court's case law, are that the respondent State can waive, either expressly or tacitly, its right to file an objection alleging failure to exhaust the remedies under domestic law.[FN15] Secondly, to be timely, the objection alleging failure to exhaust domestic remedies must be made at an early stage in the proceedings, lest a tacit waiver of the requirement on the part of the interested State be presumed.[FN16] Thirdly, on the matter of burden of proof, the State alleging failure to exhaust domestic remedies must prove that domestic remedies remain to be exhausted and that they are effective.[FN17] Therefore, if the State in question does not assert its objections regarding this requirement in a timely fashion, the presumption is that it has waived its right to allege failure to exhaust local remedies and therefore to fulfill its burden of proof.

[FN15] Cf. IACHR, Report N° 69/05, Petition 960/03, Admissibility, Iván Eladio Torres, Argentina, October 13, 2005, paragraph 42; IACtHR, Ximenes Lopes.. Preliminary Objections. Judgment of November 30, 2005. Series C No. 139, paragraph 5; IACtHR. *Moiwana Community v. Suriname*. Judgment of June 15, 2005. Series C No. 124, paragraph 49; and IACtHR, Serrano

Cruz Sisters. Preliminary Objections. Judgment of November 23, 2004. Series C No. 118, paragraph 135.

[FN16] Cf. IACtHR, Mayagna (Sumo) Awas Tingni Community Case. Preliminary Objections. Judgment of February 1, 2000. Series C No. 66, paragraph 53; Castillo Petruzzi et al. Case. Preliminary Objections. Judgment of September 4, 1998. Series C No. 41, paragraph 56; and IACtHR, Loayza Tamayo Case,. Preliminary Objections. Judgment of January 31, 1996. Series C No. 25, paragraph 40. The Commission and the Court have established that “[a]n early stage of the proceedings” should be understood as “the admissibility stage of the proceedings before the Commission, in other words, before the merits are ever considered [...]” See, for example, IACHR Report No. 71/05, petition 543/04, Admissibility, Ever de Jesus Montero Mindiola, Colombia, October 13, 2005, which cites from the IACtHR, Herrera Ulloa Case. Judgment of July 2, 2004, Series C No. 107, par. 81.

[FN17] Cf. IACHR, Report No. 32/05, Petition 642/03, Admissibility, Luis Rolando Cuscul Pivaral et al. (Persons living with HIV/AIDS), Guatemala, March 7, 2005, paragraphs 33-35; IACtHR, Mayagna (Sumo) Awas Tingni Community Case. Preliminary Objections, supra note 3, paragraph 53; Durand and Ugarte Case. Preliminary Objections. Judgment of May 28, 1999. Series C No. 50, paragraph 33; and Cantoral Benavides Case. Preliminary Objections. Judgment of September 3, 1998. Series C No. 40, paragraph 31.

29. In the instant case, it remains to be determined whether the petitioner’s complaint regarding his expulsion from Honduran territory on July 4, 2004, meets the requirements set forth in Article 46(1)(a) of the American Convention.

30. In this regard, the Commission notes that nothing in the documents supplied by Mr. De Arriba suggests that Mr. De Arriba, either personally or through an agent, attempted to file remedies in the domestic courts to challenge the alleged procedure by which Mr. De Arriba was expelled. While in certain special circumstances, the Commission has exempted petitioners from the obligation to fulfill the Article 46 requirements in cases involving deportation of aliens,[FN18] in the present case the petitioner has offered no explanation whatever as to why neither he nor a third party addressed the Honduran authorities to challenge his expulsion or to get him back into the country; nor did he allege any circumstances that would exempt him from this very fundamental rule and allow the Commission to intervene.

[FN18] IACHR, REPORT No. 89/00, CASE 11,495, JUAN RAMÓN CHAMORRO QUIROZ, COSTA RICA, October 5, 2000.

31. The Commission therefore considers that given the failure to exhaust domestic remedies, the petition lodged by Mr. Miguel De Arriba concerning his expulsion from Honduras is inadmissible under Article 46(1)(a).

V. CONCLUSION

32. Given the foregoing arguments of fact and of law, the Commission deems that the petition is inadmissible on the basis of the requirements established in Article 47(a) and 47(b) of the American Convention on Human Rights.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the present petition inadmissible.
2. To notify the petitioner and the State of this decision.
3. To publish this decision and to include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in Washington, D.C., on the 21st day of the month of October 2005. (Signed): Evelio Fernández Arévalo, President; Paulo Sérgio Pinheiro, First Vice-President., Florentín Meléndez, Second Vice-president; Freddy Gutiérrez, Paolo Carozza and Víctor Abramovich, Members of the Commission.