

Institution: Inter-American Commission on Human Rights
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Title/Style of Cause: Jose Luis Valdez Pineda v. Mexico
Doc. Type: Decision
Decided by: President: Evelio Fernandez Arevalos;
Second Vice-President: Florentin Melendez;
Commissioners: Freddy Gutierrez, Paolo Carozza, Victor Aramovich.
Dated: 23 October 2006
Citation: Valdez Pineda v. Mexico, Petition 162-04, Inter-Am. C.H.R., Report No. 103/06, OEA/Ser.L/V/II.127, doc. 4 rev. 1 (2006)

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I. SUMMARY

1. On March 03, 2004, the Inter-American Commission on Human Rights (“the Inter-American Commission” or “the IACHR”) received a complaint alleging that the United Mexican States (“the State”) had international responsibility for the arbitrary and illegal dismissal on September 15, 1993 of Mr. José Luís Valdéz Pineda, then Regional Delegate of the National Trust Fund for Low-Cost Housing (Fideicomiso Fondo Nacional de Habitaciones Populares—FONHAPO). The petitioner argues that the alleged actions are a violation of Articles 1, 1.1, 2, 3, 8, 24, and 25 of the American Convention on Human Rights (hereafter referred to as “the American Convention”).

2. For its part, the State maintains that the case is legally and materially without merit because the victim held a position of trust contract, which was terminated when the petitioner had to face an administrative responsibility procedure (CI/DQD/08/94) for having acted without honesty and integrity, a situation which led the National Fund for Low-Cost Housing (hereafter referred to as FONHAPO) to decide to apply the breach of trust provisions contained in the Federal Labor Law and the Bureaucratic and Independent Law of the Comptroller General. At the same time, it is not possible to reinstate the petitioner, since his position no longer exists due to the fact that a restructuring has taken place according to the mandate of the Technical and Fund Distribution Committee. In addition, the petitioner did not present a legal suit to be reinstated or to be assigned to another equivalent position. The only thing he requested was severance pay. Consequently, the State asks the Inter-American Commission to declare this petition inadmissible.

3. After analyzing the information provided by both parties, the Commission concludes in this report that it does not believe that a violation of the American Convention has taken place. It declares the petition inadmissible because it does not meet the requirements specified in Article

47.b of that Convention, and it resolves to notify both parties of this decision, to publish this report, and to include the report in its Annual Report.

II. PROCESSING BY THE COMMISSION

4. The petition was presented on March 3, 2004. After the initial study of the documents, and according to Article 30.2 of its Rules of Procedure, the IACHR forwarded the pertinent parts of the petition to the State on December 20, 2004 and established a period of two months for the State to present its comments. On March 29, 2005, the Commission received a note from the State with its observations about the petition. This information was forwarded to the petitioner on April 26, 2005 and he, in turn, presented his observations on May 25 and 31 of 2005, and on June 7 and 9 of 2005. This correspondence was forwarded to the State on July 13, 2005. The State responded to the observations of the petitioner through correspondence received on August 15, 2005. The petitioner then sent in further information on November 10, 11, and 23, 2005, on February 24, 2006, and on March 16, 2006. On September 19, 2006, the State's comments were forwarded to the petitioner, who responded to these observations on the same day, September 19, 2006.

III. POSITIONS OF THE PARTIES

A. The Petitioner

5. The Petitioner, José Luíz Valdéz Pineda, argues that on September 15, 1993, authorities of the Mexican State arbitrarily and illegally dismissed him from a job that he held as Regional Delegate of the National Trust Fund for Low-Cost Housing (FONHAPO), thereby violating his human rights, his right to respect as a person, his right to humane treatment, and his right to work. He alleges that he was made ineligible to work in public offices through an administrative procedure against which he was not able to defend himself since he was not notified of the decision. He went before the Court of Labor Affairs to protect his rights, filed an annulment procedure before the Ninth Metropolitan Regional Chamber of the Federal Court of Fiscal and Administrative Justice, and received a favorable decision on June 5, 1998 (File 4722/97).

6. The Petitioner argues that the courts to which he appealed ruled in his favor on a number of occasions, including: the decision of the First Appellate Court of Administrative Matters of the First Circuit (File 2F 4421/98), which annulled the administrative procedure; the decision of the Ninth Regional Metropolitan Chamber of the Fiscal Court of the Federation, which ruled in favor of his complaint appeal; an action for amparo before the Fifth District Judge of Administrative Affairs of the Federal District (582/2001), whose decision coincided with the other decisions and established, further, that he should be reimbursed pay and other benefits; and the motion not to execute a judgment issued by the Ninth Appellate Court of Administrative Matters of the First Circuit, Toca INEJ 7/2002-62, which decided to reinstate the petitioner with all of the rights and privileges he had before his arbitrary dismissal. However, the authorities never implemented these legal decisions.

7. He argues that the Ninth Appellate Court of Administrative Matters of the First Circuit (File 10/2003-91) ruled against him on a second motion not to execute a judgment, reversing the

decision on the amparo and other previous decisions in his favor. He lodged remedies of complaint and dissent as well as an appeal protesting this decision before the Supreme Court of Justice of the Nation, but these were rejected due to an “inability to appeal” verdict of October 24, 2003 (File 1964/03-PL) since, according to the Supreme Court of Justice of the Nation, the Appellate Courts review the execution of judgments through powers authorized to it in Agreement 5/2001,[FN1] and therefore its own decisions are not appealable. This, according to the allegations of the petitioner, violated the Law of Amparo and the Mexican Constitution since competence was authorized and imposed by law through a simple internal administrative agreement. As a consequence, the Supreme Court denied him the right to appeal the unfavorable verdict before a higher judge or court, thus turning it into a final decision in violation of Article 8 of the American Convention.

[FN1] General Accord, Number 5/2001. Full Tribunal of the Supreme Court of Justice of the Nation. 2001.

8. He argues that the judgment of the First Chamber of the Supreme Court of Justice of the Nation, which declared his inability to appeal the decision of the Appellate Court, denies him the character of a juridical person since it goes against all notions of equity and of the Rule of Law and violates Article 3 of the American Convention.

9. The petitioner believes that the Mexican State is responsible for violating Articles 1 and 2 of the Convention as well as its obligation to respect the rights recognized in that Convention. He believes that since he is subject to the jurisdiction of the State, he was discriminated against when the Supreme Court ruled that it was impossible to reinstate him in his job and that this action also violated his legal guarantees. At the same time, he was denied the rights derived from the previous ruling which ordered that he be reinstated in his job.

10. The petitioner argues that Articles 24 and 25 of the Convention protecting the rights of Equal Protection and Judicial Protection were violated when he was stripped of the rights conferred under the final and irrevocable ruling. At the same time, he believes that his right to a simple and prompt recourse, or to any other effective recourse recognized in the Mexican Constitution to protect his fundamental rights, have not been respected.

B. The State

11. The Mexican State maintains first, that the victim, José Luíz Valdéz Pineda, worked from August 5 to September 15, 1993, that is to say only forty-four days as Regional Delegate for the Centro-Bajío Region of the National Trust Fund for Low-Cost Housing (FONHAPO), a program under the Secretariat for Social Development (SEDESOL).

12. It alleges that the petitioner was dismissed from his job on September 15, 1993 through an administrative procedure of responsibility (File CI/DQD/08/94) for having acted without integrity and honesty and that for this reason FONHAPO decided to apply the breach of trust terms of the Federal Labor Law and the Bureaucratic and Independent Law of the General

Comptroller. Sanctions imposed on the petitioner included an economic sanction as well as ineligibility to hold jobs, positions or commissions in public service during a period of three years.

13. The State corroborated the petitioner's information on the remedies used by the petitioner and by FONHAPO and SEDESOL and on the respective decisions, with the exception of reporting on the second motion not to execute a judgment lodged by the petitioner.

14. The State points out that in order to recover the payment of the emoluments earned during the forty-four days that he worked at FONHAPO, the petitioner presented an action under labor laws before the Federal Court of Conciliation and Arbitration, which was reviewed by the Second Chamber (File 1471/94).

15. On June 21, 1995, FONHAPO was ordered to pay a percentage of the year-end bonus (aguinaldo) and wages earned during the first two-week pay period of September 1993. It was absolved from having to pay other labor benefits such as back pay, vacation time, vacation allowance, time-in-service allowance, travel expenses, and household expenses.

16. Not satisfied with the award, the petitioner lodged an action of amparo (File DT 9105-95-914), before the Fifth Appellate Court of the First Circuit on Labor Issues, which proceeded to authorize the requested amparo to the effect that the responsible authority would nullify the finding and issue another one, in which it would analyze the admissibility of the request for back pay, vacation days, vacation allowance, time-in-service allowance, travel expenses, and household expenses.

17. On October 20, 1995, the second Chamber nullified the finding of June 21 1995, and on October 24, 1995 issued a new finding confirming the previous decision. It determined that the petitioner "was not supported by reason or by the law, since he had not generated any kind of time-in-service rights, having worked there for only forty-four days." Nevertheless, according to the State, the award was duly paid. A receipt from April 25, 1996 shows that the petitioner received a total of 3,726.69 pesos, which included his salary from the first pay period of September and a year-end bonus.

18. The State also argues that reinstatement after an unjustified dismissal pertains only to rank and file workers, not those in positions of trust, since that right is not recognized by law.

19. The State argues that the Regional Delegate position was not eliminated due to an arbitrary decision of FONHAPO, but rather because of a structural need. In addition, Article 123, Section IX of the Federal Constitution establishes that in the case of unjustified dismissals, the persons dismissed shall have the right to opt for reinstatement or for the corresponding severance pay and that, in cases where positions have been eliminated, they will have the right to be assigned to another equivalent job. Therefore, since the petitioner received a severance payment, his argument that he also has the right to request reinstatement is not supported by law.

20. The arguments used by the Supreme Court of Justice of the Nation (SCJN) when it declared the petitioner's case groundless were based on the following: 1) the June 9, 1999 ruling

authorizing the SCJN to issue General Agreements to send certain cases to the Appellate Circuit Courts in order to bring the matters to conclusion with greater speed; and 2) Article 11, Section XXI of the Organic Law of the Judicial Branch of the Federation which gives the SCJN the power to dictate the rules of procedure and general agreements in their areas of competence. As a corollary, the SCJN issued General Agreement 5/2001 on June 21, 2001 to rule on the motion not to execute a judgment. In accordance with Article 94 of the Federal Constitution, the SCJN has the power to delegate these motions to the Appellate Circuit Courts. Therefore, these courts have the power to issue a new ruling on the motions placed before them for their review.

21. In view of the fact that the SCJN has the highest position in the hierarchy of the judicial branch of the Federation, its decisions have a definitive character and cannot be challenged according to Article 269 of the Federal Civil Procedures Code, applied by extension in accordance with the provisions of the second paragraph of Article 2 of the Law of Amparo.

22. The State maintains that the petitioner had access to all of the remedies provided by the internal law, that the fact that the rulings were not in his favor does not mean that his rights were violated, that he was heard with all of the due guarantees and within a reasonable period of time by competent judges, and that all of the evidence presented was accepted.

23. In addition, the effectiveness of the remedies does not necessarily imply that favorable results will be obtained by all who use them. The mere fact that an internal remedy does not produce a favorable result for the claimant does not, by itself, show the inexistence or the exhaustion of all effective internal remedies.

IV. ANALYSIS OF ADMISSIBILITY

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

24. The petitioner is empowered by Article 44 of the American Convention to present complaints before the IACHR. The petition identifies José Luís Valdéz Pineda as the alleged victim, an individual person whom Mexico has committed to respect and to guarantee the rights enshrined in the American Convention. In terms of the State, Mexico has been a party to the American Convention since March 24, 1981, the date on which the respective instrument of ratification was deposited. Therefore, the Commission has competence *ratione personae* to examine the petition.

25. The IACHR has competence *ratione loci* to review the petition, since it alleges that violations of rights protected in the American Convention have taken place within the territory of Mexico, a State that is a party to the Convention.

26. The Inter-American Commission also has competence *ratione temporis* since the obligation to respect and guarantee the rights protected in the American Convention was already in effect for the State on the date when the actions alleged in the petition are said to have occurred.

27. Finally, the Commission is competent *ratione materiae*, due to the fact that the petition denounces violations of human rights protected by the American Convention.

B. Other Requirements for the Admissibility of this petition

1. Exhaustion of domestic remedies

28. Article 46.1.a of the American Convention stipulates that, in order for a petition to be admitted, the remedies under domestic law must have been “pursued and exhausted in accordance with generally recognized principles of international law.”

29. In the present case, there is no controversy with respect to the exhaustion of domestic remedies. The jurisprudence of the Supreme Court in Mexico establishes that the judgments issued by the Chambers of the Supreme Court of Justice of the Nation cannot be appealed (and therefore revisions will always be inadmissible). On June 21, 2001, the full Supreme Court authorized Agreement 5/2001, which delegated to the Appellate Courts certain matters under the original jurisdiction of the chambers of the Supreme Court. In this particular case, the Supreme Court applied by analogy the rule regarding the inability to appeal the decisions of the Supreme Court to the Supreme Court itself by determining that a decision of the Appellate Court could not be appealed before the Supreme Court when the former is acting as if it were a chamber of the Supreme Court itself (through competence delegated by internal administrative agreement 5/2001).[FN2]

[FN2] General Agreement Number 5/2001. Full Court of the Supreme Court of Justice of the Nation. 2001.

30. The Commission observes, therefore, that in light of all that has been expressed above and in light of the evidence contained in the file, the exhaustion of domestic remedies requirement was met in the moment when the Supreme Court of Justice of the Nation issued its decision, of which the petitioner was notified on December 9, 2003, rejecting the complaint appeal and dissent appeal lodged by the petitioner against the decision of the Ninth Appellate Court on Administrative Matters of the First Circuit, and that therefore the requirements of Article 46.1.a of the Convention have been met.

2. Timeliness of the petition

31. Under Article 46.1.b. of the Convention, all petitions must be lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment rendered at the national level. In this case, the final decision of the court is from December 9, 2003 and the petition was received on March 3, 2004. Therefore, it is within the six month time period.

3. Duplication of Procedures and Res Judicata

32. The petition file does not contain any information that would indicate that this matter is pending in any other international proceedings or that it has been previously ruled on by the Inter-American Commission. Therefore, the IACHR concludes that the exceptions contained in Article 46.1.d and in Article 47.d of the American Convention are not applicable.

4. Nature of the Alleged Violations

33. In his arguments, the petitioner protests his alleged arbitrary dismissal from the position he had at the time as Regional Delegate of FONHAPO in view of alleged irregularities and illegalities in the administrative process used for his dismissal. He maintains that the decision of the Ninth Appellate Court on Administrative Matters of the First Circuit which ruled on the motion not to execute incidente de inejecucion, reverses the amparo decision and keeps it from being executed, thus violating his legal guarantees and the legal protections contained in Articles 8 and 25 of the American Convention. He also maintains that the decision of the First Chamber of the Supreme Court of Justice ruling that it was not possible to appeal the decision of the Appellate Court denies him juridical personality, judicial guarantees, equality, judicial protection, and the right to a simple and prompt recourse.

34. In terms of the petitioner's allegations regarding arbitrary dismissal and irregularities and illegalities in the administrative process, the Commission considers that the petitioner has exercised his rights through the use of internal remedies through both labor channels and judicial channels, where he obtained favorable decisions ordering the annulment of the administrative process and his reinstatement to his previous job and that, therefore, there is no violation of the Convention.

35. In terms of the alleged violation of judicial protection and judicial guarantees derived from the decision of the Ninth Appellate Court on Administrative Matters of the First Circuit to reverse the amparo decision ordering the reinstatement of the petitioner to his previous job, the State has alleged that the petitioner does not have the right to be reinstated in his job because he was in a position of trust. The State argues that the Ninth Appellate Court on Administrative Matters that reviewed the motion not to execute the 10/2003 decision reiterated that: "José Luís Valdéz Pineda was employed as a Delegate whose position was considered one of trust and, therefore, the reinstatement was inadmissible."

36. At the same time, the State alleges that the petitioner knew that he had no right to reinstatement and that in spite of having been given severance pay, he acted in bad faith by going before the federal courts to demand a right that he knew he was not going to obtain. And while it is true that labor authorities had sided with the petitioner for him at one point for him to be reinstated in his job, it is also true that when the motion not to execute Decision 10/2003-91 was analyzed, federal authorities realized that the assessment supporting the demands of the petitioner was erroneous and, thus, decided it was proper to correct the previous decision and issue another in its place.

37. In this sense, the Commission has repeatedly maintained that it "cannot get into an analysis of the irregularities [of legal decisions or] or the interpretations of procedural provisions

[of the internal law of each State] for the purposes of determining whether they were or were not applied correctly by the domestic courts.”[FN3]

[FN3] Report No. 39/05. Carlos Iparraguirre and Luz Amada Vásquez Vásquez de Iparraguirre. Peru. 2005. Paragraph 52.

38. Based on the secondary or complementary nature of the bodies of the regional human rights protection system, the Commission has stated that it “cannot take upon itself the functions of an appeals court in order to examine alleged errors of fact or law that local courts may have committed while acting within the scope of their jurisdiction, unless there is unequivocal evidence that the guarantees of due process recognized in the American Convention have been violated.”[FN4]

[FN4] Idem. Paragraph 55.

39. At the same time, the Commission has stated: “The judicial protection afforded by the Convention includes the right to fair, impartial and prompt proceedings which give rise to the possibility, but never the guarantee, of a favorable outcome. A negative result in a fair adjudication in itself does not constitute a violation of the Convention.”[FN5]

[FN5] Report 39/96. Case 11.673. Argentina. 1996. Paragraph 47.

40. In relation to the sentence of the First Chamber of the Supreme Court of Justice that decreed the impossibility of appealing the decision of the Appellate Court, which the petitioner claims violates his rights of equality, judicial protection, and the right to a simple and prompt recourse, this Commission believes that the information supplied by the petitioner and the State demonstrates that the petitioner had access to remedies before various bodies. He was also able to access the courts of appeal and the action of amparo. In this respect, it is necessary to consider that according to Article 8.2.h of the Convention, there is no right to endless appeals, only the right to a review in criminal cases. The fact that the ruling of the Ninth Appellate Court has reversed the decision ordering the reinstatement of the petitioner to the job that he once held and that this ruling is not appealable does not mean that the petitioner has been denied access to a simple remedy. Therefore, there is no violation of the Convention.

41. In terms of the petitioner’s allegation concerning the denial of his juridical personality and the violation of his equality before the law, in view of the impossibility of executing the revoked legal decision, the State has responded that “while it is true that labor authorities at first sided with the petitioner and asked for him to be reinstated in his job... the federal authorities realized that an erroneous assessment had been made that supported the decision to rule in favor of the petitioner and therefore, issued another decision instead.” In this sense, the Commission

also believes that the unfavorable result for the petitioner does not constitute a violation of the Convention.

42. Article 47.b of the Convention establishes that the Commission will declare a petition inadmissible when it does not put forth facts that tend to characterize a violation of the rights guaranteed in the Convention. After analyzing the allegations of the petitioner, the Commission concludes that Articles 1, 1.1, 2, 3, 8, 24, and 24 of the American Convention have not been violated, in that the allegations make reference to legal decisions that for the aforementioned reasons, this Commission cannot become involved in evaluating. The petitioner has not provided prima facie evidence of the particulars required in Article 47.b.

VIII. CONCLUSIONS

43. The IACHR has established in this report that the events described by the petitioner do not constitute a violation of the American Convention and, therefore, declares this petition inadmissible given that it does not fulfill one of the requirements established in Article 47.b of that Convention. It is, therefore, not necessary to consider the merits of the case any further.

THE INTER-AMERICAN HUMAN RIGHTS COMMISSION

DECIDES

1. To declare the instant case inadmissible in that it refers to alleged violations of the rights protected in Articles 1, 1.1, 2, 8, 24, and 25 of the American Convention in relationship to José Luís Valdéz Pineda.
2. To notify both parties of this decision.
3. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on the 23rd day of the month of October, 2006. (Signed): Evelio Fernández Arévalos, President; Florentín Meléndez, Second Vice-president; Freddy Gutiérrez, Paolo Carozza and Víctor Aramovich, members of the Commission.