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Title/Style of Cause:	Victor Hugo Arce Chavez v. Bolivia
Doc. Type:	Decision
Decided by:	President: Florentin Melendez; First Vice-President: Paolo Carozza; Second Vice-President: Victor Abramovich; Commissioners: Sir Clare K. Roberts, Evelio Fernandez Arevalos, Freddy Gutierrez.
Dated:	27 July 2007
Citation:	Arce Chavez v. Bolivia, Petition 788-03, Inter-Am. C.H.R., Report No. 70/07, OEA/Ser.L/V/II.130, doc. 22 rev. 1 (2007)
Represented by:	APPLICANT: the Ombudsman of the Republic of Bolivia
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I. SUMMARY

1. On July 31, 2006, the Inter-American Commission on Human Rights (hereinafter “the Commission,” or the “IACHR”) received a petition submitted by the Ombudsman of the Republic of Bolivia (hereinafter “the petitioner”) holding the Republic of Bolivia (hereinafter “the State” or “the Bolivian State”) responsible for non-compliance with a judgment for protection of constitutional rights [amparo] handed down by the Superior Court of Justice of La Paz (the Superior Court) in favor of Víctor Hugo Arce Chávez (hereinafter “the alleged victim”).

2. The petitioner alleges that the State is responsible for the violation of the rights to participate in government, equal protection under the law, and to judicial protection, provided for by articles 23, 24, and 25 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention,” and articles XIV and XVI of the American Declaration on the Rights and Duties of Man, with prejudice to the alleged victim, and for the violation of the general obligation to respect and guarantee rights under article 1(1) of the Convention. The alleged victim contends that he has exhausted the domestic remedies provided for by Bolivian legislation by lodging an amparo petition that was ruled in his favor by the Superior Court of Justice of La Paz.

3. On December 20, 2005, the Bolivian state signed a compromise agreement undertaking to seek a friendly settlement pursuant to articles 48(1)(f) and 49 of the American Convention on Human Rights. In a February 15, 2007 communication, the Ombudsman of Bolivia declared that the terms of the friendly settlement had been complied with, requested that the IACHR declare the case settled.

4. In the instant report on friendly settlement, pursuant to article 49 of the Convention and article 41(1) of the Commission's Rules of Procedure, a report is made on the facts alleged by the petitioner and the friendly settlement reached. Finally, the Commission decides to publish this report in its Annual Report to the General Assembly of the OAS and transmit it to the parties.

II. PROCESSING BEFORE THE COMMISSION

5. The Commission received a petition on July 31, 2006, submitted by the Ombudsman of the Republic of Bolivia, alleging lack of compliance with a court ruling, with prejudice to Mr. Víctor Hugo Arce Chávez.

6. The Commission, pursuant to article 30(3) of its Rules of Procedure, registered the petition under number 788/06, and on October 10 of that year transmitted the relevant parts of the petition to the State, granting it two months to submit its response.

7. On November 16, 2006, during a visit to Bolivia, the IACHR held a work meeting with the parties, and an agreement was reached to initiate a friendly settlement procedure.

8. The petitioner, in a January 4, 2007 communication, requested that the Commission place itself at the disposal of the parties to reach a friendly settlement, in view of the fact that a Compromise Agreement had been signed on December 19, 2006, between the Commander of the Physical Security Battalion [Batallón de Seguridad Física], acting in the name of the State, and the alleged victim. The IACHR then sent a communication to the parties on January 23, 2007, informing them of its decision to place itself at their disposal to reach a friendly settlement in accordance with the provisions of article 48(1)(f) of the American Convention on Human Rights and article 41 of the Commission's Rules of Procedure.

9. The IACHR received a communication from the State on March 7, 2007, in which it expressed its will to initiate a friendly settlement procedure and informing the Commission that the terms of the Compromise Agreement signed by the petitioner and the Physical Security Battalion had been authorized by the Minister of Justice of Bolivia on December 20, 2006. The State also informed in this communication that it had met the terms of the signed agreement and requested that the Commission adopt a report pursuant to article 41 of its Rules of Procedure.

10. The IACHR forwarded the State's communication to the petitioner on March 23, 2007, so he could submit the observations he deemed appropriate, granting him 30 days starting from the date this communication was transmitted.

11. On February 15, 2007, the IACHR received a communication from the petitioner stating his interest that the matter "be processed and settled according to the procedure provided for by article 48(1)(f) of the American Convention." The petitioner also requested that the IACHR adopt a friendly settlement report pursuant to article 41(5) of its Rules of Procedure and article 49 of the American Convention. This communication was forwarded to the State on March 23, 2007.

12. The IACHR received a communication from the State on April 12 that enclosed information on the compromise agreement signed by the parties.

III. FACTS

13. On December 20, 2001, Mr. Víctor Hugo Arce Chávez, who had been working for the National Police since June 8, 1993, received a memorandum dismissing him from his position as Services Supervisor, without his having been submitted to a disciplinary procedure.

14. In response, Mr. Arce lodged an amparo petition on September 2, 2002, before the Superior Court of Justice of La Paz (the Superior Court). The Court found for the petitioner on September 5, 2002, and ordered that, in compliance with its ruling, the Commander of the Physical Security Battalion reinstate the alleged victim in his post. The petitioner maintains that this decision was upheld by the Constitutional Court [Tribunal Constitucional] after carrying out its ex officio review of the case.

15. On September 6, 2002, the Physical Security Battalion issued a memorandum ordering the recruitment of Mr. Arce as a Uniformed Officer candidate [Postulante a Policía Uniformado] and subsequently, on September 25, 2002, the same authority issued another memorandum, of “reinstatement” to said position.

16. According to the information provided, which does not specify a date, the aforementioned battalion made a payment to the petition in the order of Bs. 7434 for back wages accrued during the time that his dismissal was in effect.

17. The petitioner contends that the reinstatement of the alleged victim was not carried out in full or in a legal manner, and that at the time of the petition’s submission the sum owed was of Bs 15.299, for the following reasons:

a. Although the position held by Mr. Arce at the moment of his dismissal was the one of Supervisor for Services, he was initially reinstated as a Uniformed Officer candidate and later as a Uniformed Officer. The petitioner states that within the police each post corresponds to an line item determining the name of the position, the budget assigned to it, and the corresponding salary. The new post, he claims, implied a change of line item and hence a considerable decrease in his salary as well as the loss of other employee compensation described as follows.

b. His years of employment starting on June 8, 1993 have not been recognized, nor his classification in the career ladder according to his years of service. The petitioner explains that according to these criteria additional payments are due as a certain percentage of the minimum salary, according to years of service. At the moment of his dismissal he had 8 years, 6 months and 12 days of service, placing him in category 2, which entitled him to an additional 45% of the minimum wage over his basic salary. According to the petitioner, had all his years of service been taken into account before his dismissal, he would now be in category 3 and he would be entitled to a 55% of the minimum wage. Notwithstanding the aforementioned, the years of service the agency to date has recognized for him place him in category 0, because they are being counted from September 2002, that is, from the date of his reinstatement. Considering points a

and b, the petitioner asserts that the monthly salary of the alleged victim at the time of his dismissal, including payments in recognition of years of service, was of Bs 1166.09 and that up to February 2006, his salary was in the amount of Bs 890.24.

c. Mr. Arce's right to a functional bonus [bono funcional] has not been recognized, for which he had been receiving Bs 185 a month, based on the line item corresponding to the position he held at the moment of his dismissal.

d. The salary of the alleged victim in September, 2002 (the month of his reinstatement) compensated only five days of work, notwithstanding that his first reinstatement had taken place in accordance with a September 6, 2002 memorandum.

e. In the year 2002 he was not paid a Christmas bonus corresponding to the entire year during which he was arbitrarily and illegally dismissed, but only in proportion to the last three months of the year, or since his reinstatement.

f. Notwithstanding the order in force for him to receive back pay for the duration of the dismissal, the payments into the social security fund for those 8 months were not made. Moreover, the petitioner contends that since January 2001 the institution employing him has been paying less into this fund than it should.

g. Newborn nursing subsidy payments [subsídios de lactancia] were not made in full to Mr. Arce upon the birth of his son.

18. With respect to legal action taken, the petitioner affirms that after having lodged an amparo petition against the alleged victim's arbitrary dismissal, he attempted, in both the administrative and judicial venues, to have the judgment in his favor executed. This procedure of execution of judgment ended on February 13, 2006, and on this date domestic remedies were exhausted.

IV. FRIENDLY SETTLEMENT

19. The State and the petitioners signed a compromise agreement which reads as follows:

COMPROMISE AGREEMENT 12.19.06

This private document, which may become public in nature solely upon acknowledgement of signatures, constitutes the record of the following clauses of agreement between the parties:

ONE. PARTIES.- The parties to this agreement are:

1. The party of the first part, the Bolivian State, represented by Col. Carlos H. Quiroga Pérez, DAEN [Diplomado en Altos Estudios Nacionales - Graduate in Advanced National Studies], Commander of the Physical Security Battalion, and the other authorities signing this document.

2. The party of the second part, Víctor Hugo Arce Chávez, Bolivian citizen, police officer of the Physical Security Battalion, CI 2610881 LP, who is legally competent and a resident of the city of La Paz.

TWO. BACKGROUND.- On December 20, 2001, by virtue of memorandum 2361/2001, signed by General Oscar Guerrero Castillo DESP [Diplomado de Estudios Superiores de Policía –

Graduate in Advanced Police Studies], Commander of the Physical Security Battalion, Víctor Hugo Arce Chávez was permanently discharged without having been first submitted to the appropriate disciplinary procedure.

On September 2, 2002, Víctor Hugo Arce Chávez lodged an amparo petition before the Superior Court of Justice of La Paz, alleging that he had been the victim of an arbitrary and unlawful dismissal from his position, in violation of existing procedural guarantees and of his right to defense. Víctor Hugo Arce Chávez requested that the court declare his petition “lawful and that in the execution of judgment his reinstatement be ordered, including his item number and acknowledgement of his years of service.” The Second Civil Chamber of said Superior Court of Justice found for the petitioner on September 5, 2002. In its Decision 359/2002 it ordered that the Commander of the Physical Security Battalion reinstate Víctor Hugo Arce Chavez in his position.

The Constitutional Court, in an ex officio review on October 14, 2002, handed down Constitutional Judgment 1239/2002-R, deciding to “Approve the Decision [359/2002] of September 5, 2002, at page 49, issued by the Second Civil Chamber of the Superior Court of the Judicial District of La Paz.”

Although Víctor Hugo Arce Chávez was restored to the Physical Security Battalion in September 2002, and received a sum for back wages accrued during the time that the unlawful and arbitrary dismissal was in force, the battalion failed to comply with other reparations necessary for an effective and full reinstatement. Faced with the aforementioned non-compliance, the Ombudsman, in representation of the victim, lodged a petition on July 31, 2006 before the Inter-American Commission on Human Rights, alleging the violation of articles 23, 24, and 25 of the American Convention on Human Rights, and of articles XIV and XVI of the American Declaration of the Rights and Duties of Man.

For its part, in response to the lack of compliance with its Decision 359/2002, the Second Civil Chamber of the Court of Justice of La Paz referred the case to the Office of the Attorney General.

On October 10, 2006, the IACHR forwarded the complaint lodged by the Ombudsman to the Bolivian State.

Between the months of September and December, in order to reach a satisfactory solution to the case of police officer Víctor Hugo Arce Chávez, working meetings were held between the Commander of the Physical Security Battalion, other government representatives, police officer Víctor Hugo Arce Chávez, and representatives of the Office of the Ombudsman. In addition, on November 16, 2006, a working meeting was held between the parties with Commissioner Florentín Meléndez present in representation of the IACHR. The result of these meetings is the present compromise agreement that, if complied with in full, will end the processing of the complaint lodged before the Inter-American Commission on Human Rights.

THREE. COMMITMENTS OF THE PARTIES

1. COMMITMENTS OF THE BOLIVIAN STATE

The Bolivian State, represented by the Physical Security Battalion, undertakes in good faith and within the time periods herein established to faithfully comply with the following commitments:

PECUNIARY MEASURES

- a) To pay Víctor Hugo Arce Chávez the sum of Bs 988 (nine hundred eighty-eight bolivianos) to make up for the difference owed to him for his Christmas bonus of the year 2002. This payment must be made within five days of the signature of this document.
- b) To pay Víctor Hugo Arce Chávez the sum of Bs 3,440 (three thousand four hundred and forty bolivianos) to complete the infant nursing subsidy owed to him on account of the birth of his son Hugo Alberto Arce Cano. This payment must be made within five days of the signature of this document.
- c) To pay Víctor Hugo Arce Chávez the sum of Bs 11,228 (eleven thousand two hundred and twenty-eight bolivianos) as the difference owed to him on account of his position in the career ladder and his years of service for the period between January 2002 and September 2006, and for payments to the Future of Bolivia Pension Fund Office for the period between January and September of 2002. This payment must be made within five days of the signature of this document. The payments into the fund shall be the responsibility of police officer Víctor Hugo Arce Chávez once he receives the sum from the Physical Security Battalion.
- d) To pay Víctor Hugo Arce Chávez the sum of Bs 5,000 (five thousand bolivianos) in damages for pain and suffering caused to him and his next of kin. This payment must be made within five days of the signature of this document.

NON-PECUNIARY MEASURES

- e) The Battalion and the National Police shall abstain from taking any measure against police officer Víctor Hugo Arce Chávez in reprisal for the international complaint filed by him against the Bolivian State. Likewise, any present or future investigation and/or disciplinary procedure against police officer Víctor Hugo Arce Chávez shall be conducted under strict adherence to the guarantees of due process provided for by the internal rules of the National Police, the laws of the Nation, the Constitution, and the American Convention on Human Rights.
- g) To add to the personal file of police officer Víctor Hugo Arce Chávez, a copy of Decision 359/2002, handed down by the Second Civil Chamber of the Superior Court of Justice of La Paz, a copy of Constitutional Judgment 1239/2002-R, a copy of this compromise agreement, and a copy of the Report on Friendly Settlement that the Inter-American Commission on Human Rights may approve. The first three documents shall be added to his personal file within five days of the signature of this agreement. The copy of the Report on Friendly Settlement of the IACHR shall be added to the file within ten days of its notification to the Bolivian State by the IACHR.

MEASURES REGARDING INFORMATION PROVIDED TO THE IACHR

- g) Upon signature of this compromise agreement, the Bolivian State will inform the IACHR through the Ministry of Foreign Affairs and Worship that a friendly settlement procedure, provided for by article 41 of the IACHR's Rules of Procedure, has been initiated regarding

petition P-788/06 Víctor Hugo Arce Chávez v. Bolivia. This communication will enter into force within five days following the signature of this document.

h) Once the commitments of both parties have been fully complied with, the Bolivian State will request, through the Ministry of Foreign Affairs and Worship, that the IACHR pursuant to article 49 of the American Convention on Human Rights, draw up a report on friendly settlement, in order to end the processing of P-788/06 Víctor Hugo Arce Chávez v. Bolivia.

2. COMMITMENTS OF VÍCTOR HUGO ARCE CHÁVEZ .-

For his part, Víctor Hugo Arce Chávez undertakes to faithfully and strictly comply with the following:

a) To strictly comply with Decision 915/06 of the General Command of the National Police which in its disposition states: "Henceforward from the issuing of this resolution, all members of the Physical Security Battalions in the country must observe, submit to, and comply with the provisions of the Rules on Breaches of Discipline and their Sanctions of the National Police."

b) Upon signature of this compromise agreement, to inform the IACHR through the Office of the Ombudsman that a friendly settlement procedure, provided for by article 41 of the IACHR's Rules of Procedure, has been initiated regarding petition P-788/06 Víctor Hugo Arce Chávez v. Bolivia.

c) Once the commitments of both parties have been fully complied with, to request that the IACHR, pursuant to article 49 of the American Convention on Human Rights, draw up a report on friendly settlement, in order to end the processing of P-788/06 Víctor Hugo Arce Chávez v. Bolivia.

d) Once the state commitments listed in clause three 1 (commitments of the Bolivian State) have been met, to file a brief with the Second Civil Chamber and/or the Office of the Attorney General, reporting on the Physical Security Battalion's compliance with points that prompted the amparo petition and the referral of the case to the Office of the Attorney General.

FOUR. EFFECTIVE COMPLIANCE WITH OTHER MEASURES.- The Bolivian State and Víctor Hugo Arce Chávez hereby declare that before this agreement was signed, the Bolivian State complied with the following measures:

a) Acknowledgement of Víctor Hugo Arce Chávez's 13 years, 4 months, and 11 days of service in the Physical Security Battalion, over the period between June 8, 1993 and October 18, 2006.

b) Acknowledgement of the applicability of the category of 55% of the national minimum wage in favor of Víctor Hugo Arce Chávez, in connection with his years of service in the Physical Security Battalion.

FIVE. FAILURE TO COMPLY WITH THE AGREED-UPON COMMITMENTS. The commitments in this compromise agreement must be effectively complied with within the specified time periods for each one of them. Failure to comply with one, several, or all commitments shall end the friendly settlement procedure before the Inter-American Commission on Human Rights, and both the State and Víctor Hugo Arce Chavez, represented by the Ombudsman, must immediately inform the Inter-American Commission that they waive any

friendly settlement. This will authorize the IACHR to continue with the contentious processing of the case until it can issue a report and subsequently, if appropriate, submit the case to the Inter-American Court of Human Rights.

SIX. COMPLIANCE IN GOOD FAITH AND ACCEPTANCE. The parties freely express their agreement with the foregoing clauses and undertake to strictly comply with them in good faith, in witness whereof they hereby sign four copies of the present document in the city of La Paz, on the twentieth day of the month of December of the year two thousand and six.

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

20. In a February 5, 2007 communication, received by the IACHR on February 15 of that same year, the Ombudsman of Bolivia reported that “on January 9, the Bolivian State fulfilled the commitments it had undertaken in the compromise agreement, and in this connection find attached a copy of the Statement of Receipt of a Check, and a check against Banco Unión No. 4439, made out to Víctor Hugo Arce Chávez.” The petitioner, consequently, requested that the Commission adopt a report on friendly settlement, pursuant to article 41(5) of its rules of Procedure, and article 49 of the American Convention. The petitioner also requested that the Commission follow up on point (e) of Clause Three (1) of the compromise agreement, in order to “ensure that the victim will not suffer future arbitrary reprisals for having sought recourse before the inter-American system.”

21. The IACHR reiterates that, pursuant to articles 48(1)(f) and 49 of the Convention, the purpose of this procedure is to reach “a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention.” The acceptance of this procedure signifies the good faith of the State to comply with the purposes and objectives of the Convention, based on the principle of *pacta sunt servanda*, according to which States must comply in good faith with treaty obligations. It also wishes to reiterate that this friendly settlement procedure provided for by the Convention allows for the conclusion of individual cases in a non-contentious manner, and has demonstrated, for different country cases, that it can provide an important means for both parties to achieve a solution.

22. The Commission highly values the efforts of both parties to reach a solution in harmony with the purpose of the Convention. The Commission understands that the present approval of a settlement does not entail a judgment pursuant to the conventional powers that the Commission is endowed with, should the case arise of a possible failure to comply with this agreement. In this connection, it is the opinion of the Commission that the fifth clause of this agreement entitles the parties to come before the Commission and file the petitions they deem appropriate, but does not bind the Commission to act in one way or another.

VI. CONCLUSIONS

23. Based on the foregoing considerations and in accordance with the procedure provided for by articles 48(1)(f) and 49 of the American Convention, the Commission wishes to reiterate its deep appreciation for the efforts made by the parties and its satisfaction for the achievement of a

friendly settlement agreement in the instant case, based on the purpose of the American Convention.

24. Based on the foregoing considerations and conclusions outlined in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To approve the terms of the friendly settlement agreement signed by the parties.
2. To continue to follow-up and monitor of each and every point of this friendly settlement and to remind the parties of their commitment to inform the IACHR regarding compliance with this friendly settlement.
3. To publish this report and include it in its annual report to the OAS General Assembly.

Done and signed by the Inter-American Commission on Human Rights in Washington, D.C., on the 27th day of the month of July, 2007. (Signed): Florentín Meléndez, President; Paolo Carozza, First Vice-President; Víctor Abramovich, Second Vice-President; Sir Clare K. Roberts, Evelio Fernández Arévalos, and Freddy Gutiérrez, Commissioners.