

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 67/08; Petition 275-08
Session: Hundred Thirty-Second Regular Session (17 – 25 July 2008)
Title/Style of Cause: Leopoldo Lopez Mendoza v. Venezuela
Doc. Type: Decision
Decided by: Chairman: Paolo Carozza;
Second Vice-Chairman: Felipe Gonzalez;
Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Victor E. Abramovich.
Under the provisions of Article 17.2 of the Commission’s Rules of Procedure, Commissioner Luz Patricia Mejia, a Venezuelan national, did not take part in the deliberations or in the decision issued in the foregoing case.

Dated: 25 July 2008
Citation: Lopez Mendoza v. Venezuela, Petition 275-08, Inter-Am. C.H.R., Report No. 67/08, OEA/Ser.L/V/II.134, doc. 5 rev. 1 (2008)

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I. SUMMARY

1. On March 4, 2008, the Inter-American Commission on Human Rights (hereinafter the “Inter-American Commission,” “the Commission,” or “the IACHR,”) received a petition filed by Mr. Leopoldo López Mendoza on his behalf (hereinafter “the petitioner,” or “the alleged victim”), alleging the violation by the Bolivarian Republic of Venezuela (hereinafter “Venezuela,” “the State,” or “the Venezuelan state”) of the rights protected under Article 8 (judicial guarantees), Article 23 (political rights) and Article 25 (judicial protection) all relating to Article 1.1 of the American Convention on Human Rights (hereinafter “the American Convention,” “the Convention,” or “the ACHR”).

2. The petitioner alleges that as a result of two administrative sanctions issued against him in 2004, under the provisions of Article 105 of the Organic Law of the Office of the Comptroller General of the Republic, he was declared ineligible to hold any public office or position for periods of 3 and 6 years respectively by the Office of the Comptroller General of the Republic (hereinafter “the Comptroller General”), through an administrative action without due process of law and without any sentence having been handed down. With regard to exhaustion of domestic remedies, the petitioner alleges that the exception for unwarranted delay under the provisions of Article 46.2 (c) of the American Convention applies in this case because the petition to nullify the actions and the petition challenging the constitutionality of the administrative actions and of Article 105 of the above mentioned law he had filed have not been decided by the judicial authorities even though the legal deadlines to do so have passed.

3. As of the date this report was approved, the Venezuelan state had not responded to the petition.

4. After examining all available information in light of the admissibility requirements stipulated in Articles 46 and 47 of the American Convention, the Commission concluded that it is competent to hear the claim and that the petition is admissible because of the alleged violation of the rights protected by Articles 23, 8 and 25 in connection with the duties established in Article 1.1 of the American Convention. At the same time, under the principle of *iura novit curia*, the IACHR concluded that the events described could also constitute a violation of the duties established in Article 2 of the same instrument. Therefore, the Commission decided to notify the parties, to publish this report and to include the report in its Annual Report.

II. PROCESSING BEFORE THE COMMISSION

5. The Commission received the initial petition on March 4, 2008, and it was registered under number 275-08.

6. On April 15, 2008, the Commission forwarded the relevant parts of the petition to the state and, in accordance with its Rules of Procedure, the Commission requested that the state respond within a period of two months.

7. As of the date this report was approved, the Venezuelan state had not responded to the petition.

III. POSITIONS OF THE PARTIES

A. The Petitioner

8. The petitioner stated that, on August 4, 2000, he was elected Mayor of the Chacao Municipality, State of Miranda, by popular vote and that he was reelected as Mayor on October 31, 2004. He continues to occupy that office and will do so until November of this year when elections will be held and when he intends to run for Mayor of the State of Caracas. The petitioner added that as a result of two administrative sanctions imposed in 2004, he was barred from occupying any other public office or position for periods of 3 and 6 years, respectively, by the Comptroller General of the Republic, the administrative office charged with overseeing the management of public finances.

9. With regard to these administrative actions, the petitioner indicated that on October 21, 2004, the Directorate of Professional Responsibility of the Office of the Comptroller General of the Republic, determined that, as National Analyst in the Office of the Chief Economist of *Petróleos de Venezuela (PDVSA)*, Venezuela's state oil company, he had administrative responsibility for alleged irregularities during fiscal year 1998 and fined him.

10. The petitioner also indicated that on July 12, 2004, on a parallel track to the above mentioned action, the Office of the Comptroller General of the Republic began investigating him about alleged budgetary changes in his office as Mayor of the Chacao Municipality during fiscal

year 2002. The petitioner points out that during this investigation he was not allowed to refute the allegations or to argue and prove that he bore no responsibility. The petitioner added that, given the situation, on August 10, 2004, he filed an amparo petition arguing that he was not afforded due process of law, that his right to a defense had been violated and that he had not been allowed to participate in the most important phase of the administrative proceedings. According to the petitioner, the amparo petition was declared inadmissible on August 25, 2004. The petitioner points out that on October 24, 2004, based on the allegations investigated during this second proceeding, the Office of the Comptroller General of the Republic again determined that he bore administrative responsibility and fined him a second time.

11. The petitioner then pointed out that one year after the determinations of responsibility, the Office of the Comptroller General of the Republic issued resolutions on August 25 and on September 26, 2005, imposing the “accessory sanction” of barring him from occupying any public office or position for periods of 3 and 6 years respectively, based on the previous findings of administrative responsibility.

12. The petitioner indicated that these actions by the Comptroller General were based on Article 105 of the Organic Law of the same entity which stipulates:

Under the provisions of Articles 91 and 92 of this law, the finding of administrative responsibility will be sanctioned with the fine established in article 94 depending on the seriousness of the offence and the amount of damages caused. It will be the exclusive responsibility of the Comptroller General of the Republic, and only of the Comptroller General, without any other proceeding required, and depending on the seriousness of the crime committed, to suspend the responsible individual from his position without pay for a period no longer than twenty-four (24) months or to remove that individual from office, with the highest authority being responsible for executing the action; and, depending on the gravity of the offence, to bar the individual from occupying any public office or position for up to a maximum of fifteen (15) years, in which case the Comptroller General must forward all pertinent information to the Human Resources office of the entity or agency where the events took place in order that it may follow the appropriate course of action.

13. With regard to exhaustion of domestic remedies, the petitioner pointed out that he filed administrative petitions for reconsideration of the two actions that determined his administrative responsibility which were resolved by the Comptroller General on March 28, 2005, in the sense that it ratified the finding of administrative responsibility leading the petitioner to file petitions to nullify the actions and precautionary amparo petitions with the Politico Administrative Chamber of the Supreme Court (hereinafter “the Politico Administrative Chamber”) on August 4, 2005 and on October 4, 2005, respectively. According to the petitioner, the petitions for precautionary amparo were rejected and that a decision on the grounds of the petitions for remedy had not been made by the above mentioned chamber even though the law stipulates a maximum period of 10 months to do so.

14. The petitioner added that on November 15, 2005, he filed in the Office of Comptroller General administrative petitions for reconsideration of the resolutions whereby he was politically disqualified for public office, and that those petitions were declared inadmissible by the

Comptroller General on January 9, 2006. The petitioner also stated that on June 21, 2006, he filed in the Constitutional Chamber of the Supreme Court (hereinafter “the Constitutional Chamber”) an action of unconstitutionality[FN2] against Article 105 of the Organic Law of the Office of the Comptroller General of the Republic which establishes the sole authority of the Comptroller to politically disqualify an individual as an accessory penalty to the finding of administrative responsibility. The petitioner explained that the grounds for this action are that the article in question violates due process, it violates the principle of non bis in idem, it violates the principle of presumption of innocence, and, also, it allows for sanctions that are wholly disproportionate in relation to the main penalty of administrative responsibility and fine. The petitioner pointed out that, in that action, he challenged both administrative actions of political disqualification together. The petitioner added that the Constitutional Chamber has not issued a decision on this petition for remedy either. The petitioner considers that the exception for unwarranted delay established in Article 46.2 (c) of the ACHR is applicable in this case.

[FN2] Article 65 of the Bolivarian Republic of Venezuela establishes that:

They will not be able to opt to any post in popular election whoever has been convicted of a crime during the exercise of its functions and other that affect the public patrimony, within the timeframe set by law, from the compliance of the prison sentence and according to the gravity of the crime.

15. Finally, the petitioner added that on February 25, 2008, the Comptroller General of the Republic went to the National Electoral Council to place on record a list of 400 persons, among them the petitioner himself, who had been politically disqualified with the purpose of preventing them from running for office in the elections to be held in November of this year.

B. The State

16. As indicated in paragraphs 3 and 7, as of the date this report was approved, the state has not responded to the petition.

V. ANALYSIS OF ADMISSIBILITY

A. Competence

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

17. The petitioner is authorized by Article 44 of the Convention to file petitions on his behalf. The alleged victim in this case was under the jurisdiction of the Venezuelan state at the time the alleged events took place. For its part, Venezuela ratified the American Convention on August 9, 1977. Therefore, the Commission has competence *ratione personae* to examine the petition.

18. The Commission is competent *ratione loci* to examine the petition given that it alleges violations of rights protected under the American Convention that allegedly took place within the territory of a state party to the Convention.

19. The Commission is also competent *ratione temporis* since the obligation to respect and guarantee the rights protected under the American Convention was already in force for the state at the time the events alleged in the petition presumably took place.

20. Finally, the Commission is competent *ratione materiae*, because the petition alleges presumed violations of human rights protected by the American Convention.

B. Exhaustion of domestic remedies

21. Article 46.1 (a) of the American Convention provides that, for a complaint filed with the Inter-American Commission in accordance with Article 44 of the Convention to be admissible, it is necessary for all domestic remedies to have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to allow domestic authorities to hear an alleged violation of a protected right and, if appropriate, to provide a solution before the claim is heard in an international venue.

22. The requirement of prior exhaustion of domestic remedies is applicable when adequate and effective remedies to the alleged violation are available within the domestic system. In this respect, Article 46.2 specifies that the requirement is not applicable when domestic legislation does afford due process of law to protect the right allegedly violated; or if the alleged victim was denied access to the remedies available under domestic law; or if there has been unwarranted delay in issuing a decision concerning those remedies. As provided in Article 31 of the Rules of Procedure of the Commission, when the petitioner claims one of these exceptions, it is the burden of the state to prove that domestic remedies have not been exhausted unless that is clearly evident from the record.

23. It can be inferred from principles of international law reflected in precedent established by the Commission and the Inter-American Court that, first, the state being sued can tacitly or explicitly renounce invoking this rule[FN3]. Second, in order for the exception for non-exhaustion of domestic remedies to be considered, it must be introduced during the initial stages of the proceedings before the Commission, or, in its absence, the Commission presumes that the interested state has tacitly renounced the right to avail itself of the exception[FN4]. Third, in accordance with the criteria for burden of proof applicable in the matter, a state that claims the non-exhaustion of domestic remedies must outline the domestic remedies that must be exhausted and provide proof of their effectiveness[FN5].

[FN3] IA Court HR., Case of Ximenes Lopes. Preliminary Exception . Sentence dated November 30, 2005. Series C No. 139, par. 5; IACourt HR., Case of the Moiwana Community. Sentence dated June 15, 2005. Series C No. 124, par. 49; and IA Court HR, Case of the Serrano Cruz Sisters. Preliminary Exceptions. Sentencw dated November 23, Series C No. 118, par. 135;

IACHR, Report N° 69/05, petition 960/03, Admissibility, Iván Eladio Torres, Argentina, October 13, 2005, par. 42.

[FN4] IA Court HR, Case of the Mayagna Community (Sumo) Awas Tingni. Preliminary Exceptions. Sentence dated February 1, 2000. Series C No. 66, par. 53; Case Castillo Petruzzi et al.. Preliminary Exceptions. Sentence dated September 4, 1998. Series C No. 41, par. 56; and IA Court HR, Case of Loayza Tamayo. Preliminary Exceptions. Sentence dated January 31, 1996. Series C No. 25, par. 40. The Commission and the Court have established that “[I]the first stages of the proceedings” mean “the admissibility phase of the proceeding before the Commission, that is, prior to any consideration of the merits[...]”. See, for example, IACHR Report N° 71/05, petition 543/04, Admissibility, Ever de Jesús Montero Mindiola, Colombia, 1 October 13, 2005, which cites IA Court HR, Case Herrera Ulloa. Sentence dated July 2, 2004. Series C No. 107, par. 81.

[FN5] IACHR, Report N° 32/05, petition 642/03, Admissibility, Luis Rolando Cuscul Pivaral and other persons affected by HIV/AIDS, Guatemala, March 7, 2005, par. 33-35; IA Court HR., Case of the Mayagna Community (Sumo) Awas Tingni. Preliminary Exceptions, subpar. item 3, par. 53; Case Durand y Ugarte. Preliminary Exceptions. Sentence dated May 28, 1999. Series C No. 50, par. 33; and Case Cantoral Benavides. Preliminary Exceptions. Sentence dated September 3, 1998. Series C No. 40, par. 31.

24. As noted in paragraph 16, the Venezuelan state did not respond to this petition and, in that regard, it tacitly renounced invoking the exception of non-exhaustion of domestic remedies. For his part, the petitioner alleged an unwarranted delay in the handing down of a decision on the petitions for domestic remedies filed by him in this case.

25. The Commission notes that the legal remedies pursued by the petitioner are: i) petition to nullify together with a precautionary amparo petition filed in the Politico Administrative Chamber against the administrative actions that determined his administrative responsibility; and ii) action of unconstitutionality against Article 105 of the Organic Law of the Office of the Comptroller General of the Republic filed in the Constitutional Chamber.

26. In accordance with the criteria reviewed, in order to evaluate if the requirement of exhaustion of domestic remedies has been met the Commission must first determine which is the adequate remedy to the violations alleged in the case being examined.

27. The remedy of nullification together with precautionary amparo in administrative matters is regulated by Article 21 of the Organic Law of the Supreme Court as follows:

Any person, natural or juridical, whose rights or interests are affected by a law, regulation, ordinance or other administrative action which is general in scope, emanating from any of the organs of the national, state or municipal government, or who has [sic] a personal, direct and legitimate interest in challenging an administrative action with specific effects, may sue in the Supreme Court to have the action nullified on grounds of it being illegal or unconstitutional.

(...)

In its final judgment, the Supreme Court of Justice will determine whether nullification of the actions or articles being challenged is applicable or not, and it will decide the timeframe for the effects of the decision to go in force; also, in accordance with the terms of the petition, the Supreme Court may order cash payments and reparation for damages caused by the administrative authority, as well as ordering the necessary measures to be taken to remedy any individual legal situation infringed upon by the administrative actions.

(...)

The Supreme Court may suspend the effects of an administrative action with specific impact whose nullification has been petitioned by an interested party when the law allows it or when the suspension is essential in order to avoid irreparable damage or damage difficult to repair permanently taking into consideration the circumstances of the case. To that effect, the petitioner must be required to present sufficient cause in order to guarantee the results of the trial.

28. For its part, the responsibility of the Constitutional Chamber to decide on actions of unconstitutionality brought by the general public to the court for its review is established in Article 5 of the Organic Law of the Supreme Court of Justice as follows:

It is the competence of the Supreme Court of Justice as the Highest Court in the Republic:

(...)

6. To declare wholly or partially null laws and other actions with the force of law of the National Assembly that collide with the Constitution of the Bolivarian Republic of Venezuela, through the exercise of the concentrated control of constitutionality. The decision declaring the total or partial nullification must be published in the Official Gazette of the Bolivarian Republic of Venezuela, and must specifically outline the timeframe in which its effects would go into force.

(...)

In accordance with the Constitution of the Bolivarian Republic of Venezuela, the concentrated control of constitutionality is to be exercised only by the Constitutional Chamber under the provisions of this law and it cannot be exercised in cases other than those where an action of unconstitutionality has been filed by a citizen, in which case the principle of preparation will not be enforced to deny a petition and the Chamber may itself compensate for any deficiencies the petitioner may exhibit in the filing with regard to the specific laws being challenged given that it is a matter that affects the general public. The effects of the judgment will apply to the public in general and will be published in the Official Gazette of the Bolivarian Republic of Venezuela and in the official newspaper of the corresponding state or municipality.

29. Under the provisions of the law, the purpose of the recourse of nullification with regard to administrative matters is to determine the legality and/or constitutionality of an administrative action with general or specific application and, in the event the effects are nullified, the administrative action would also become null. With regard to the action of unconstitutionality, its

purpose is to determine the constitutionality of, among others, laws passed by the National Assembly. In the event a law is found to be incompatible with the Constitution, it is the responsibility of the Constitutional Chamber to declare the partial or total, as the case may be, nullification of the law.

30. In the foregoing case, the record shows that the petitioner pursued the recourse of nullification against the administrative actions that determined his administrative responsibility on August 4, 2005 and on October 4, 2005, respectively. The record also shows that on June 21, 2006, the petitioner filed an action of unconstitutionality in the Constitutional Chamber against Article 105 of the Organic Law of the Office of the Comptroller General of the Republic. The IACHR considers that both recourses pursued by the petitioner are adequate in the sense that a decision could result either in the annulment of the effects of the administrative action that determined his administrative responsibility and that served as grounds for his political disqualification, or in voiding the effects of the law that authorizes the Comptroller General of the Republic to impose an accessory sanction of political disqualification.

31. According to available information, 2 years and 9 months elapsed without the Politico Administrative Chamber having issued a definitive judgment. The Commission notes that, in accordance with Venezuelan law, Article 19 of the Organic Law of the Supreme Court of Justice establishes a series of steps for the resolution of either the recourse of nullification or the action of unconstitutionality that, added together, do not exceed a period of 8 months. Also, more than 2 years have passed without the Constitutional Chamber having issued a decision on the action for unconstitutionality filed by the petitioner.

32. It does not appear, *prima facie*, that the matter to be decided upon domestically is particularly complex or that the delay could be due to reasons beyond the control of Venezuelan authorities. On the contrary, this involves a straightforward analysis of law whereby the appropriate judges must evaluate whether an administrative action and a law violate the Venezuelan constitution. In any case, the state did not present arguments to justify the delay in resolving the recourses filed by the petitioner and thus failed to meet the burden of proof that it is required of the state in these matters.

33. In addition, the Commission takes notice that the deadline for candidates to register to run for elective office in the elections to be held on November 23, 2008, expires on August 12 of this year. Without prejudging the merits of this case, the Commission notes that the lack of a timely resolution of the petitions for domestic remedies could imply that those remedies become ineffective or pointless.

34. The Commission considers that the above mentioned elements are sufficient to conclude that, in this case, there has been an unwarranted delay in the resolution of the petitions for domestic remedies filed and, in that sense, under the provisions of Article 46.2 (c) of the American Convention the petitioner is exempt from having to exhaust domestic remedies.

35. The Commission reiterates that claims of exception to the rule of exhaustion of domestic remedies under the provisions of Article 46.2 of the Convention are closely linked to the determination of possible violations of certain rights protected by the Convention such as

guarantee of access to justice. However, Article 46.2 of the American Convention, by its nature and purpose, is a regulation with autonomous content, vis á vis the substantive regulations of the Convention. Therefore, the determination of whether the exceptions to the rule of exhaustion of domestic remedies established in that rule are applicable in this case must be made individually and prior to the analysis of the merits of the case since it relies on a different standard than the one used to determine the violation of Articles 8 and 25 of the Convention. It should be noted that the pertinent causes and effects that have prevented the exhaustion of domestic remedies in this case will be analyzed in the report on the merits of the controversy approved by the Commission in order to determine if they do constitute violations of the American Convention.

C. Deadline for submitting the petition

36. Under the provisions of Article 46.1(b) of the Convention, for a petition to be considered admissible it must be filed within a period of 6 months starting with the date on which the interested party was notified of the final judgment that exhausted domestic jurisdiction. This rule is not applicable when the Commission finds that any of the exceptions to the exhaustion of domestic remedies established in Article 46.2 of the Convention has come into play. In those instances, the Commission must determine whether the petition was filed within a reasonable period of time in accordance with Article 32 of its Rules of Procedure.

37. The Commission concluded that in the foregoing case there was an unwarranted delay in the resolution of the petitions for domestic remedies in accordance with the provisions of Article 46.2 (c) of the Convention. The legal remedies outlined in the previous section were filed on August 24, 2005, October 4, 2005, and on June 21, 2006. The petitioner expected the legal remedies to have been resolved within the legal deadlines but they remain pending with no decision issued to date. Under these circumstances, the Commission considers that the petition was submitted within a reasonable period of time.

D. Duplication of proceedings and international res judicata

38. Article 46.1 (c) of the Convention establishes that the admissibility of a petition is subject to the requirement that the matter "is not pending in any other international proceeding" and Article 47 (d) of the Convention stipulates that the Commission will not admit a petition that is substantially the same as a previous petition or communication already examined by the Commission or by another international organization. In this case, the record indicates that neither of those circumstances that would render the petition inadmissible exist.

E. Characterization of the alleged facts

39. For purposes of admissibility, the Commission must decide if the petition includes events that could constitute a violation as established in Article 47 (b) of the American Convention, if the petition is "manifestly unfounded," or if its "lack of merit is evident" as established in item (c) of the same article. The standard of measurement of these extremes is different than the standard required to decide on the merits of a claim. The Commission must carry out a prima facie evaluation to determine if the complaint substantiates the apparent or potential violation of a right protected by the Convention and not to establish the existence of a violation. That

examination is a brief analysis that does not imply prejudging or advancing an opinion on the merits of the case.

40. The Commission considers that should the events described by the petitioner be proven true with regard to the restriction his political rights through an administrative action without the issuance of a definitive sentence, as well as the alleged irregularities in the domestic proceedings and the delay in the resolution of the petitions filed for domestic remedies, they could constitute violations of the rights protected by Articles 23,8, 25 and 1.1 of the American Convention.

41. Likewise, by virtue of the principle of *iura novit curia*, the IACHR considers that given the fact that the complaint deals with a political disqualification imposed as a sanction by means of a law that authorizes the administrative authority to do so absent a criminal proceeding, the facts could also constitute a violation to the state's obligation established in Article 2 of the ACHR.

V. CONCLUSIONS

42. Based on the elements of fact and of law presented and without prejudging the merits of the matter, the Inter-American Commission concludes that the case meets the admissibility requirements stipulated in Articles 46 and 47 of the American Convention and, therefore:

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the petition admissible under consideration with regard to the rights protected in Articles 23, 8, and 25 of the American Convention, in connection with the obligations established in Articles 1.1 and 2 of the same instrument.
2. To notify the state and the petitioner of this decision.
3. To begin proceedings on the merits of the matter.
4. To publish this decision and to include it in the Annual Report to be submitted to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 25 day of the month of July, 2007.
(Signed): Paolo G. Carozza, President; Felipe González, Second Vice-President; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, and Víctor E. Abramovich Commissioners.