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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 74/08; Petition 4524-02
Session:	Hundred Thirty-Third Regular Session (15 – 31 October 2008)
Title/Style of Cause:	Juan Vergara Reyes v. Chile
Doc. Type:	Decision
Decided by:	Chairman: Paolo Carozza; First Vice-Chairwoman: Luz Patricia Mejia Guerrero; Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Florentin Melendez, Victor E. Abramovich. Commission member Felipe Gonzalez, a Chilean national, did not participate in either the deliberations or the decision in this case, in keeping with Article 17(2)(a) of the Rules of Procedure of the Commission.
Dated:	17 October 2008
Citation:	Vergara Reyes v. Chile, Petition 4524-02, Inter-Am. C.H.R., Report No. 74/08, OEA/Ser.L/V/II.134, doc. 5 rev. 1 (2008)
Represented by:	APPLICANT: Alejandro Espinoza Bustos
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I. SUMMARY

1. This report addresses the admissibility of petition 4524-02, opened by the Inter-American Commission on Human Rights (hereinafter the “Inter-American Commission,” “Commission,” or “IACHR”) in response to a complaint received on November 13, 2002 from attorney Alejandro Espinoza Bustos and psychiatrist Jacqueline Van Rysselberghe Herrera, on behalf of Mr. Juan Vergara Reyes against the State of Chile (hereinafter “the State” or “the Chilean State”). The petitioners allege that the State has incurred in responsibility under the American Convention on Human Rights (hereinafter the “American Convention” or “Convention”) specifically with regard to Mr. Juan Vergara Reyes’ right to personal liberty.

2. The petition indicates that Mr. Juan Vergara Reyes was deprived of his liberty on November 6, 2002 while he was the mayor of Florida Municipality in Chile on the order of a legally qualified magistrate in that municipality. This was pursuant to Article 238 of the Civil Procedures Code, since the municipality owed a debt to six teachers. The petitioners report that a writ of amparo was filed in the Court of Appeals of Concepción against the magistrate’s warrant in order to safeguard Mr. Vergara Reyes’ right to personal liberty. This writ was denied and that decision was appealed to the Supreme Court, which reaffirmed the original order on November 5, 2002 in a split decision, to detain Mr. Juan Vergara Reyes for 15 days.

3. The State, for its part, maintains that Mr. Juan Vergara Reyes did not exhaust the remedies available within the local jurisdiction to rectify the alleged violation. In addition to the

writ of amparo, he should have also filed an appeal based on unconstitutionality and a motion to nullify a proceeding. The State also argues that Mr. Juan Vergara Reyes' detention was carried out by the competent judicial authority, pursuant to the Civil Procedures Code, as an enforcement measure to gain compliance with a final judgment.

4. According to Article 46 and 47 of the American Convention, as well as Articles 30 and 37 of its Rules of Procedure, and after analyzing the positions of the parties, the Commission determines to declare the petition admissible. Therefore, the IACHR will notify the parties of this decision, publish it, and include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCESSING BY THE IACHR

5. The complaint from the petitioners was received in the Executive Secretariat of the Commission on November 13, 2002. It also requested the granting of precautionary measures on behalf of Mr. Vergara Reyes to keep the Chilean State from depriving the alleged victim of his liberty. The IACHR began to process the petition on November 15, 2002, when it transmitted to the State the relevant parts of the petition and asked it to submit a response within 20 days, pursuant to Article 30(4) of the Rules of Procedure of the IACHR.

6. In a message dated December 8, 2002, the State requested an extension of the deadline. In note 54 dated February 23, 2003 and Note 247 dated September 10, 2007, it presented its observations. These were in turn transmitted to the petitioners on April 21, 2003 and September 20, 2007, respectively. The petitioners submitted additional observations in a message received on June 2, 2003.

III. POSITIONS OF THE PARTIES ON ADMISSIBILITY

A. The petitioners

7. According to the petition, Mr. Juan Vergara Reyes was deprived of his liberty on November 6, 2002 while he was mayor of the Florida Municipality in Chile as the result of an order issued on October 17, 2002 by the legally qualified magistrate in the case "Caamaño et al v. Florida Municipality." The petitioners indicate that the detention had been ordered for 30 days, with the possibility of an extension to 60 days, until the mayor paid a debt of 270 million pesos that the municipality owed to 6 teachers who had worked for it.

8. The petitioners added that the debt which gave rise to the arrest warrant had been incurred before Mr. Vergara Reyes became mayor. They also indicated that the municipality lacked the funds needed to pay the debt.

9. The petitioners reported that a writ of amparo was filed with the Court of Appeals of Concepción to overturn the arrest warrant against Mr. Vergara Reyes and safeguard his right to personal liberty. The writ was denied on October 25, 2002. They added that this denial was appealed to the Supreme Court, which on November 5, in a split decision, upheld the original decision, to detain Mr. Juan Vergara Reyes for 15 days.

10. In a subsequent message, the petitioners confirmed that Mr. Vergara Reyes was released on November 20, 2002, after reaching an agreement to pay the teachers claiming payment. According to the petitioners, this is clear proof that the only reason the alleged victim was detained was non-payment of a debt which had not even been incurred during his tenure as mayor; for this Mr. Vergara Reyes was deprived of his liberty for 14 days.

11. For the above reasons, the petitioners assert that the State violated Article 7 of the American Convention.

B. The State

12. In its initial brief, the State reported that on November 20, 2002, Mr. Juan Vergara Reyes had been released after an agreement was reached between Florida Municipality and the teachers making the claim. It included payments to be made in installments for the amounts owed, part of which would be delivered, through investment projects, by the Office of the Assistant Secretary for Regional Development of the Ministry of the Interior.

13. Furthermore, the State argued that Mr. Vergara Reyes' arrest had been ordered by the judicial authority as an enforcement measure to force him to comply with an obligation arising from a pay discrepancy in labor contracts.

14. During processing of the petition, the State alleged that the petitioners failed to exhaust the remedies available within domestic law, and that in addition to the writ of amparo, they should have filed an appeal based on unconstitutionality and a motion to nullify a proceeding. Regarding the former, the State indicated that the Supreme Court, at its own initiative or at the request of a party, regarding matters before it or which have been submitted on appeal, may declare irrelevant all legal precepts contrary to the Constitution in individual cases. As for the motion to nullify a proceeding, the State clarified that such a motion, at the initiative of the court or of a party, may nullify proceedings in cases for which this is expressly established by law, and for all cases in which there is a defect which would cause some of the parties an injury that could only be repaired with the annulment.

15. The State has reiterated that, according to domestic legislation, the mayor's detention did not constitute imprisonment for debt, but rather an enforcement measure decreed by the competent judicial authority to gain compliance with a final judgment in which the party was found to be delinquent in paying compensation owed to the plaintiffs for services rendered.[FN2] The State added that the application of such a measure in a labor dispute followed a logic similar to that which a legislator applies to delinquent support payments, addressing the legally protected interest which one seeks to safeguard and protect. Consequently, the State alleged, such an enforcement measure cannot be deemed to be arbitrary, illegal, or illegitimate.

[FN2] The State reported that Article 238 of the Civil Procedures Code authorizes the judge in charge of execution of a final decision to "(...) issue measures leading to compliance, allowing him to impose fines and order detention for up to two months... ."

16. In a message dated September 10, 2007, the State informed the Commission that on December 14, 2002 Law 19,845 had been published and was in force since that date. It permanently establishes within the Organic Constitutional Municipality Law that no mayor can be imprisoned for debts incurred by prior municipal administrations.

17. The State asked the Commission to declare the petition inadmissible not only on the grounds that the petitioners had failed to exhaust domestic remedies, but also because the alleged facts do not constitute a violation of Mr. Juan Vergara Reyes' right to personal liberty.

IV. ANALYSIS

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

18. The petitioners are entitled under Article 44 of the American Convention to lodge complaints within the IACHR. The alleged victim named in the petition is an individual whose rights under the American Convention the State has undertaken to respect and ensure. As for the State, the Commission notes that Chile has been a party to the Convention since August 21, 1990, the date on which it deposited its instrument of ratification. Therefore, the Commission has competence *ratione personae* to review the petition.

19. The Commission has competence *ratione loci* to review the petition since it alleges violations of rights protected by the American Convention to have occurred within the territory of a State Party to it. The Commission has competence *ratione temporis* since the obligation to respect and ensure the rights protected by the American Convention was in force for the State when the violations alleged in the petition took place. Finally, the Commission has competence *ratione materiae* because the petition alleges violations of human rights that are protected by the American Convention.

B. Other admissibility requirements

1. Exhaustion of domestic remedies

20. Article 46(1)(a) of the American Convention provides that in order for a petition lodged before the Commission under 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 ensure that the State in question has the opportunity to resolve controversies within its own legal framework.

21. In the instant case, the petitioners argued that they had duly exhausted domestic remedies by presenting the writ of amparo to the Court of Appeals of Concepcion, and by later appealing the denial of same to the Supreme Court. The State, in turn, argued that in addition to the writ of amparo, the petitioners must also have filed an appeal based on unconstitutionality and a motion to nullify a proceeding.

22. In response, the petitioners stated that amparo is the only remedy offered by Chilean law to protect personal liberty. In this vein, they added that an appeal based on unconstitutionality is out of order because it would not obtain the liberty of the appellant. They added that during the amparo proceedings, the Supreme Court ruled that the legal norms which had led to the arrest of Mr. Vergara Reyes were appropriate, and therefore, constitutional. This indicates that such an appeal would have failed.

23. As for a motion to nullify a proceeding, the petitioners alleged that its purpose is to overturn decisions that were impacted by a procedural or formal defect, which was not the case for Mr. Juan Vergara Reyes. For this reason there was no reason to file such a motion.

24. From the information presented by the parties it is seen that a motion to nullify a proceeding is applicable only when there are procedural flaws. Furthermore, in an appeal based on unconstitutionality the Supreme Court can declare irrelevant any legal precepts that contradict the Constitution. While a constitutional appeal would have been a suitable remedy, in the case of Mr. Vergara Reyes the Supreme Court had already heard the issues during the amparo proceedings and ruled that the legal norms were appropriate. Therefore, the admissibility of this case cannot be contingent upon exhaustion of this remedy.

25. In addition, the Commission observes that Article 21 of the Constitution of the Republic of Chile, in relation to Article 19(7)(b) of same, establishes that a writ of amparo “can be filed on behalf of anyone who has had their right to personal liberty and individual safety deprived, disturbed, or threatened.” Furthermore, it is noted that the principal complaint of the petitioners is the arrest warrant issued against Mr. Juan Vergara Reyes and his imminent deprivation of liberty. Therefore, the Commission concludes that amparo is the remedy which offers the necessary swiftness and is suitable to protect the right to personal liberty. This remedy was exhausted by the petitioners.

26. In light of the foregoing analysis, the Commission concludes that Mr. Juan Vergara Reyes made use of the remedies afforded by the State’s legal system. Therefore, the petition meets the admissibility requirements of Article 46 of the American Convention.

2. Time period for lodging a petition

27. According to Article 46(1)(b) of the Convention, in order for a petition to be admitted, it 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 within the domestic legal system.

28. In this case, the petitioners filed a writ of amparo against the arrest warrant issued against Mr. Juan Vergara Reyes. Once this was denied, they filed an appeal with the Supreme Court, which was also denied on November 5, 2002. The Commission observes that since the petition was received in the Executive Secretariat of the Commission on November 13, 2002, the time requirement established in Article 46(1)(b) of the American Convention was met.

3. Duplication of proceedings and res judicata

29. Article 46(1)(c) of the Convention establishes that in order to be admissible, the subject of the petition “must not be pending in another international proceeding for settlement,” and Article 47(d) stipulates that it must not be “substantially the same as one previously studied by the Commission or by another international organization.” In the instant case, the parties do not allege, nor does it appear in the record, that either of these conditions of inadmissibility is present.

4. Nature of the alleged facts

30. Article 47(b) of the American Convention requires that a petition be declared inadmissible if it does not state facts that tend to establish a violation of the rights guaranteed by the Convention.

31. At this stage of the proceedings it is not appropriate for the Commission to state whether or not the alleged violations of the American Convention actually occurred. The IACHR has conducted a prima facie evaluation and determined that the petition raises allegations which, if proven, may tend to characterize possible violations of the rights guaranteed by the Convention.

32. From the information and arguments presented by the petitioners, we see that the complaint rests on Mr. Juan Vergara Reyes’ deprivation of liberty while he was mayor as a result of a financial debt held by the Florida Municipality to a group of teachers who in 1993 had filed a labor suit against the municipality for failure to pay them their compensation. In this regard, it should be noted that on March 23, 1994 the legally qualified magistrate issued a judgment ordering the municipality to pay the teachers the money they were claiming. The Commission observes that in November of 2001 the plaintiffs asked the Magistrate’s Court to issue an enforcement measure against the mayor to gain his compliance with the decision in their favor.[FN3] The Commission notes that Mr. Vergara Reyes was in fact deprived of his liberty on November 6, 2002 and released on the 20th of that month, as an enforcement measure for failure to pay that debt. He remained in prison for 14 days until a payment plan was agreed to with the teachers involved.

[FN3] It should be noted that from the submissions by the State and the petitioners it is not possible to tell whether the magistrate of Florida judicially required Mr. Vergara Reyes to comply with the court order before issuing an arrest warrant.

33. Without addressing the merits of the petition, the Commission notes that in December of 2002 the Organic Constitutional Municipalities Law was amended to clarify that orders cannot be issued to arrest mayors for debts incurred prior to their entry into office. However, it maintains the possibility of imprisoning mayors for debts incurred during their term of office.

34. Thus, based on the information provided by the petitioners, and without prejudging on the merits of the case, the IACHR concludes that the petition contains allegations that if proven and if compatible with other requirements, would tend to establish a violation of the right to

personal liberty, established in Article 7 and in keeping with Article 1(1) of the American Convention. The IACHR, by virtue of the principle of *iura curia novit*, also finds that if the alleged facts are proven true, there may also be violations of the duty to adopt provisions within domestic law set forth in Article 2 of the Convention, in conjunction with Article 1(1) of same.

V. CONCLUSIONS

35. The Commission concludes that it has competence to hear this case and that the petition is admissible according to Articles 46 and 47 of the American Convention.

36. Based on the arguments in fact and in law presented above, and with no pre-judgment on the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this case admissible with respect to the alleged violations of rights protected under Article 7 in relation to Article 1(1) and 2 of the American Convention.
2. To notify the parties of this decision.
3. To proceed to review the merits of the case; and
4. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 17th day of the month of October, 2008. (Signed: Paolo G. Carozza, Chairman; Luz Patricia Mejía Guerrero, First Chairwoman; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, Florentín Meléndez, and Víctor E. Abramovich, members of the Commission).