

Institution: Inter-American Commission on Human Rights
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Title/Style of Cause: Roberto Villeda Arguedas, Gladys Annabella Morfin Mansilla, Enrique Neutze Aycinena, Carlos Augusto Valle Torres, Alvaro Hugo Rodas Martin, Olga Cristina Camey Solva de Noack, Mariano Rayo Munoz, Jorge Rolando Barrientos Pellecer, Ricardo de la Torre Gimeno, Pablo Manuel Duarte Saenz de Tejada, Oscar Alfredo Guzman Gonzalez, Marco Antonio Solares Perez, Angel Mario Salazar Miron, Adolfo Otoniel Fernandez Escobar, Rafael Eduardo Barrios Flores, Pedro Pascual Simon Vasquez, Hugo Rolando Samayoa Pereira, Mario Fernando Flores Ortiz, Alfonso Bauer Paiz, Nineth Varenca Montenegro Cotton, Jorge Antonio Balsells Tut and Jorge Mario Garcia Rodriguez v. Guatemala

Doc. Type: Decision
Decided by: President: Luz Patricia Mejia Guerrero;
First Vice President: Victor Abramovich;
Second Vice President: Felipe Gonzalez;
Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Florentin Melendez; Paolo Carozza.

Dated: 27 March 2009
Citation: Villeda Arguedas v. Guatemala, Petition 459-03, Inter-Am. C.H.R., Report No. 41/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)

Represented by: APPLICANT: Roberto Molina Barreto

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I. SUMMARY

1. On June 18, 2003, Roberto Molina Barreto, representing the Center for Defense of the Constitution (CEDECON), Gladys Annabella Morfín Mansilla, and Roberto Villeda Arguedas (hereinafter “the petitioners”), the latter in his own name and all of them representing Enrique Neutze Aycinena, Carlos Augusto Valle Torres, Álvaro Hugo Rodas Martín, Olga Cristina Camey Solva de Noack, Mariano Rayo Muñoz, Jorge Rolando Barrientos Pellecer, Ricardo de la Torre Gimeno, Pablo Manuel Duarte Sáenz de Tejada, Oscar Alfredo Guzmán González, Marco Antonio Solares Pérez, Ángel Mario Salazar Mirón, Adolfo Otoniel Fernández Escobar, Rafael Eduardo Barrios Flores, Pedro Pascual Simón Vásquez, Hugo Rolando Samayoa Pereira, Mario Fernando Flores Ortiz, Alfonso Bauer Paiz, Nineth Varenca Montenegro Cotton, Jorge Antonio Balsells Tut, and Jorge Mario García Rodríguez (hereinafter “the alleged victims”) submitted a complaint to the Inter-American Commission on Human Rights (hereinafter the “Commission,” the Inter-American Commission,” or the “IACHR”) against the State of Guatemala (hereinafter “the State,” “Guatemala,” or the “Guatemalan State”) for the alleged violation of the right to a

fair trial enshrined in Article 8 of the American Convention on Human Rights (hereinafter “the Convention” or the “American Convention”).

2. The petitioners state that they filed unconstitutionality actions with the Constitutional Court of Guatemala, against a decree issued by the Congress of the Republic expanding the State General Budget of Revenues and Expenditures, which purpose was, inter alia, to indemnify those who had been members of the so-called Civil Self-Defense Patrols or PAC (Patrullas de Autodefensa Civil). They allege that in the context of said unconstitutionality actions one of the participating judges acted in an allegedly partial and self-interested way because he belonged to the party in power at the time of the events. With respect to arguments on admissibility, they allege that, in accordance with domestic legislation, judges on the Constitutional Court cannot be subject to recusal and the allegedly arbitrary and illegal actions carried out by that judge are not subject to being challenged, and thus is it not possible to exhaust domestic remedies.

3. The State claims that the situation being challenged by the petitioners with respect to the participation of the referenced judge in the indicated proceeding is consistent with Guatemalan law and does not violate any law. In addition, the State denies that there has been any violation of the judicial guarantees of the alleged victims, in that the Constitutional Court consisted of seven members in the indicated proceedings and that, in any case, it is impossible to prove that there was any partiality among the remaining judges. The State also alleged that the decree that the petitioners sought to challenge with the referenced actions was not implemented. As for the admissibility requirements, the State maintained that the decision relating to the petition is not subject to appeal, and for this reason the processing of the case before the IACHR would violate the supremacy of the Constitution and the legal certainty that it assigns to decisions handed down by the Constitutional Court.

4. After examining the positions of the parties, the Commission concludes that it is competent to hear the petition under review and that the case is inadmissible in the light of Articles 46 and 47 of the American Convention. Finally, the Commission decides to publish this report in the Annual Report to the OAS General Assembly and to notify both parties.

II. PROCESSING BEFORE THE INTER-AMERICAN COMMISSION

5. On June 18, 2003, the Commission received a complaint submitted by Roberto Villeda Arguedas, the Center for Defense of the Constitution (CEDECON), represented by Roberto Molina Barreto and Mrs. Gladys Annabella Morfín Mansilla, and assigned the case number 459-03. On July 30, 2003, the Commission sent the relevant sections to the State, asking it to submit its response within a period of two months in accordance with the provisions of Article 30.2 of the Rules of Procedure of the Inter-American Commission on Human Rights (hereinafter the “Rules of Procedure”). The State’s response was received on October 17, 2003.

6. In addition, the IACHR received information from the petitioners on the following dates: December 1, 2003, December 2, 2003, September 4, 2007, January 22, 2008, and July 7, 2008. Said communications were duly forwarded to the State.

7. The IACHR also received observations from the State on the following dates: October 27, 2003, September 19, 2006, November 14, 2007, and May 26, 2008. Said communications were duly forwarded to the petitioners.

III. POSITIONS OF THE PARTIES

A. The petitioners

8. The petitioners claim that the alleged victims filed unconstitutionality actions against a decree issued by the Congress of the Republic, which had been settled by the Constitutional Court of Guatemala, through a decision in the adoption of which one of the participating judges had acted in a partial and self-interested way.

9. In this respect, the petitioners state that on November 7, 2002, they filed a Partial Unconstitutionality Action against some of the articles of Decree 62-2002 of the Congress of the Republic, because they felt that these articles violated constitutional standards. They state that in that decree the government of Guatemala had obtained the expansion of the State General Budget of Revenues and Expenditures for the year 2002 as well as authorization to increase the public debt, for the purpose of carrying out programs that had great political impact for the government, and particularly for the then governing party, the “Guatemalan Republican Front,” which included indemnity for those who had been members of the “Civil Self-Defense Patrols” or “PAC” during the domestic armed conflict. That decree had also been the subject of other unconstitutionality actions filed by different Guatemalan citizens and organizations,[FN1] which ended up being joined in a single case.

[FN1] The individuals that the petitioners indicate as the alleged victims, including Mr. Roberto Villeda Arguedas, are the individuals who signed the various unconstitutionality actions that were ultimately joined.

10. The petitioners report that the Constitutional Court, the court that heard these actions, was at the time made up of five regular judges and two alternate judges. One of the judges was Judge Francisco José Palomo Tejada, whom they accuse of partiality in his decision, in that – along with his court functions – was a representative of the Guatemalan Republic Front, FRG, in the Central American Parliament and formerly defense attorney for the General Secretary of the party in a criminal proceeding. They state that the then President of the Republic of Guatemala belonged to that party, which in turn held most of the delegate seats in the Congress of the Republic. They also state that – subsequent to the events that led to this petition - Palomo Tejada had continued to act as an attorney in various cases relating to the former dictator Efraín Ríos Montt and the FRG.

11. The petitioners report that in accordance with Article 170 of the Fundamental Protection, Habeas Corpus, and Constitutionality Act (Ley de Amparo, Exhibición Personal y Constitucionalidad), the grounds for recusal established in the Law on the Judiciary and in any other law are not applicable to judges of the Constitutional Court, so that the alleged victims

never had the opportunity to raise the issue of removal of the indicated judge. Consequently, the petitioners state that the political ties of the judge and his alleged partiality were denounced during the public hearing held on December 17, 2002, asking at the same time that he recuse himself, without receiving any response.

12. Regarding the State's argument that the alleged partiality of one of the judges would not affect the workings of the rest of the court, the petitioners argue that since this court is a unitary judicial body that must decide with absolute impartiality, it is enough for one of the members of the court to act with partiality for the rest of the court's decisions to be corrupted. In addition, they state that the State's position that the impartiality requirements contained in Article 207 of the Political Constitution of Guatemala are not applicable to judges of the Constitutional Court results in a positivist criterion that ignores the spirit of the constitutional standard enshrining the impartiality of constitutional judges. The petitioners allege that if the Constitution requires independence and impartiality for regular court judges, it also does so for constitutional judges even though this is not expressly established in a specific article for the latter court

13. The petitioners state that on January 14, 2003, the Constitutional Court handed down a decision declaring inadmissible all the unconstitutionality actions filed against Decree 62-2002 and the alleged victims were informed of that decision on the following day. The petitioners conclude that the presence of then judge Francisco Palomo in that decision made the judgment of the Constitutional Court partial, violating, as a result, the right of the complainants to independent and impartial constitutional justice and the due process recognized in Article 8 of the American Convention.

B. The State

14. The State maintained that the participation of the indicated judge in the ruling on the constitutionality actions did not violate domestic laws and that the opening of the case before the IACHR would be an assault on the supremacy of the Constitution and the legal certainty that it assigns to the decisions of the Constitutional Court.

15. In this respect, the State alleged that the appointment of Francisco José Palomo Tejada to the Central American Parliament was effected in accordance with applicable rules, adding that, once elected, the delegates to that parliament do not represent any country and thus do not represent any political party either.

16. In addition, the State indicated that the judges that make up the Constitutional Court do not represent the authority that appointed them and that, in accordance with Article 203 of the Political Constitution of Guatemala, they are independent in the exercise of their functions and are subject only to the Constitution and the law. Regarding the criminal proceeding in which the indicated judge had acted as defense attorney for the Secretary General of the FRG as claimed by the petitioners, the State added that that case was not heard before the Constitutional Court and bore no relationship at all to the proceeding asserting the unconstitutionality of Decree 62-2002. The State added that in accordance with the provisions of Article 170 of the Fundamental Protection, Habeas Corpus, and Constitutionality Act, matters relating to disqualification were left to the discretion of the judge himself.

17. The State also argued that there is not sufficient evidence to establish that all the judges that voted to declare the unconstitutionality action inadmissible had acted partially, indicating that the evidence offered by the petitioners from which the lack of impartiality of the indicated judge could be inferred does not indicate that there was influence on the other judges.

18. The State added that the fact of being a member of a political party does not constitute a legal impediment in Guatemala for being appointed to the Constitutional Court, since the mere circumstances of being affiliated with a party should not necessarily be understood to mean that said judge would later act in a partial manner. Accordingly, the State emphasized the impossibility of proving the existence of partiality or lack of independence using as justification only the documents indicating the affiliation and election of the former judge Palomo Tejada as representative of a political party in a public position. The State added that Article 207[FN2] of the Political Constitution of Guatemala, which establishes the incompatibility of the judge's function with leadership positions in political associations and parties, is only applicable to magistrates and judges who are part of the judiciary and not the members of the Guatemalan Constitutional Court, given that the Constitutional Court is an autonomous court and is specifically governed under Article 270[FN3] of the Constitution. The State indicated that in any case the incompatibility embodied in Article 207 does not refer to the fact of being affiliated with a political party but rather with the inability to hold leadership positions in those entities.

[FN2] The State cited Article 207 of the Political Constitution of Guatemala, the relevant section of which establishes that "The function of the judge or magistrate is incompatible with any other employment, with leadership positions in political associations and parties, and with the status of minister in any religion."

[FN3] The State indicated that Article 270 of the Political Constitution of Guatemala establishes: Requirements for judges of the Constitutional Court. In order to be a judge on the Constitutional Court, one must meet the following requirements: a) Be a native Guatemalan; b) Be an attorney belonging to the Bar Association; c) Be of recognized integrity; and d) Have at least fifteen years of professional experience. Judges of the Constitutional Court shall enjoy the same prerogatives and immunities as judges of the Supreme Court of Justice.

19. The State also argued that the referenced Decree 62-2002, amended by Decree 26-2003, although it did take on legal life, did not have effects with respect to providing funds to the State to pay the so-called "ex PAC," given that said indemnity did not become a reality until the year 2006, as a result of the creation of the "Forest and Waters for Harmony" (Bosques y Agua para la Concordia) Trust, through another legislative instrument, i.e., Government Resolution 406-2005.

20. Finally, the State indicates that during the proceeding hearing conducted due to the unconstitutionality action filed, no argument was made regarding the failure to observe due process or the violation of judicial guarantees, and thus it cannot be alleged that there was any violation based solely on the issuance of a decision unfavorable to the interests of the parties to

the action. The State requested that the petition be declared inadmissible pursuant to what it submitted and in accordance with Article 47.a of the Convention.

IV. ANALYSIS

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

21. The petitioners have standing under Article 44 of the American Convention to submit complaints to the IACHR. The petition indicates as alleged victims individuals with respect to whom the Guatemalan State committed to respect and guarantee the rights enshrined in the American Convention and in other international instruments. Based on the foregoing, the IACHR is competent *ratione personae* to hear this petition.

22. The IACHR is competent *ratione loci* to hear the petition in that it alleges violations of rights protected by the American Convention that took place within the territory of a State party to that convention.

23. The IACHR is competent *ratione temporis*, in that the facts alleged would have taken place when the obligation to respect and guarantee the rights established in the Convention were already in effect for Guatemala, a State that ratified the American Convention on May 25, 1978. Finally, the IACHR is competent *ratione materiae* because the petition denounces violations of human rights protected under the American Convention.

B. Other requirements for admissibility of the petition

1. Exhaustion of domestic remedies

24. Article 46.1.a of the American Convention provides that, in order for a complaint submitted before the Inter-American Commission to be admissible in accordance with Article 44 of the Convention, domestic remedies must have been attempted and exhausted in accordance with generally recognized principles of international law.[FN4] The purpose of this requirement is to allow domestic authorities to hear the alleged violation of a protected right and, if appropriate, to resolve the situation before it is heard by an international body.

[FN4] See I/A Court H.R., Chaparro Álvarez and Lapo Íñiguez Case. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C, No. 170, para. 16; I/A Court H.R., Nogueira de Carvalho et al. v. Brazil Case. Preliminary Objections and Merits. Judgment of November 28, 2006. Series C No. 161, para. 50; I/A Court H. R., Acevedo Jaramillo et al. v. Peru Case. Judgment of February 7, 2006. Series C No. 144, para. 122 et seq.; I/A Court H. R., Ximenes Lopes v. Brazil Case. Preliminary Objection. Judgment of November 30, 2005. Series C No. 139, para. 4; and other cases.

25. In the instant case, the State maintained that the decision referred to in the petition is not subject to appeal and asserted that during the hearing of the proceeding resulting from the unconstitutionality action filed, no argument was made regarding the failure to observe due process nor the violation of judicial guarantees, and thus it cannot be alleged that such a violation existed based merely on the fact that a decision unfavorable to the interests of the parties to the action was handed down. For their part, the petitioners maintained that the facts in its petition could not be appealed in any way, in that the recusal was not admissible for the judges of the Constitutional Court nor was the decision adopted by that court subject to appeal.

26. Article 170 of the Fundamental Protection, Habeas Corpus, and Constitutionality Act establishes as follows,

Power to recuse. The grounds for recusal established in the Law on the Judiciary or in any other law are not applicable to the Judges of the Constitutional Court. When in their judgment, they have a direct or indirect interest, or their impartiality is compromised in any other way, Judges may disqualify themselves from hearing a case, in which case the respective alternate shall be called upon to serve.

27. The Commission notes that the claim of the petitioners substantially rests on their not having been able to prevent the participation of a judge, whom they accuse of partiality, because domestic law did not provide them with remedies to challenge that judge.

28. In addition, the petitioners assert that the independence and impartiality requirements contained in Article 207 of the Political Constitution of Guatemala should be applicable not only to judges belonging to regular courts but also to the judges of the Constitutional Court. They assert that maintaining otherwise would result in a positivist standard that would ignore the spirit of the constitutional standard.

29. In this regard, the Commission notes that, by maintaining on the one hand that the Constitution establishes impartiality and independence requirements for the judges of the Constitutional Court and asserting on the other hand that Article 170 of the Fundamental Protection, Habeas Corpus, and Constitutionality Act makes it impossible to make these guarantees effective, the petitioners are substantively questioning the consistency of the latter law with the Constitution as well as its compatibility with the American Convention.

30. In the instant case, based on the information appearing in the file, it is deduced that the alleged victims in the context of the proceeding in which they brought action regarding the unconstitutionality of Decree 62-2002, specifically when making their “allegation for the hearing,” made reference to the alleged partiality of the judge in question, asking that he abstain from continuing to hear the proceeding and recuse himself.[FN5] However, they did not question the constitutionality of the provision that established the inability to recuse the judge whose questioning they formulated, given that such ability to challenge the total or partial constitutionality of a law is contemplated in the Guatemalan legal system.

[FN5] See hearing allegation submitted by Roberto Villeda Arguedas, paragraph VIII, dated December 17, 2002.

31. Article 266 of the Guatemalan Constitution establishes:

Unconstitutionality of laws in specific cases. In specific cases, in any proceeding in any district or jurisdiction, in any instance and in any court of cassation and up to the time a decision is issued, the parties shall be able to submit as an action, objection, or motion the total or partial unconstitutionality of a law. The court shall rule in this regard.

32. The Commission notes that the petitioners had the ability to seek a ruling on the constitutionality of Article 170 of the Fundamental Protection, Habeas Corpus, and Constitutionality Act, a law establishing the inability to recuse judges of the Constitutional Court. The Commission has received no indication that any motion to this effect was filed.

33. Based on the foregoing considerations and the fact that, in order for a complaint to be admissible, domestic remedies must be attempted and exhausted in accordance with internationally recognized principles of international law, the Commission believes that in the instant case the petitioners did not exhaust the appropriate remedy for questioning the legitimacy of the provision they were challenging, under the terms established in Article 46.1.a of the American Convention.

34. Based on the foregoing, the Commission declines to consider the other admissibility requirements set forth in the Convention.[FN6]

[FN6] Report No. 02/08, Petition 506/05, Bolivia, March 6, 2008; Report No. 87/05, Petition 4580/02, Peru, October 24, 2005; Report No. 73/99, Case 11.701, Mexico, May 4, 1999; Report No. 24/99, Case 11.812, Mexico, March 9, 1999; and Report No. 82/98, Case 11.703, Venezuela, September 28, 1998, and other cases.

V. CONCLUSION

35. The Commission concludes, with respect to the alleged violations of the Convention, that the petitioners did not file the proper proceeding within domestic law in order to satisfy the requirement of prior exhaustion of domestic remedies as established in Article 46.1.a of the American Convention.

36. Given the preceding considerations of fact and of law,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case inadmissible.
2. To notify the parties of this decision.
3. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on March 27, 2009. (Signed): Luz Patricia Mejía Guerrero, President; Víctor E. Abramovich, First Vice-President; Felipe González, Second Vice-President; Sir Clare K. Roberts, Paulo Sérgio Pinheiro; Florentín Meléndez; and Paolo Carozza, members of the Commission.