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File Number(s): Report No. 131/09; Petition 12.230
Session: Hundred Thirty-Seventh Regular Session (28 October – 13 November 2009)
Title/Style of Cause: Zoilamerica Narvaez Murillo v. Nicaragua
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Decided by: First Vice President: Victor Abramovich;
Second Vice President: Felipe Gonzalez;
Commissioners: Sir Clare K. Roberts, Florentin Melendez, Paolo Carozza.
Dated: 12 November 2009
Citation: Narvaez Murillo v. Nicaragua, Petition 12.230, Inter-Am. C.H.R., Report No. 131/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)
Represented by: APPLICANT: Vilma Nunez de Escorcia
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ALLEGED VICTIM: Zoilamérica Narváez Murillo

PETITIONERS: Zoilamérica Narváez Murillo and Vilma Núñez de Escorcia

ALLEGED VIOLATIONS: Articles 1, 2, 8, 24 and 25 of the American Convention on Human Rights and Article 7 paragraphs b, d, e, f, and g of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women

PROCEEDING START DATE: November 8, 1999

I. POSITION OF THE PETITIONERS

1. The petitioners alleged that the State of Nicaragua violated the right to fair trial of Mrs. Zoilamérica Narváez, by allowing the complaint of alleged sexual abuse crimes filed before the First District Criminal Court of Managua to go unpunished, for not stripping the suspect of his immunity. The petitioners stated that the legislative power hindered access to justice because they did not process the application to strip him of immunity (*desafuero*), as established by the procedure of the Immunity Law No. 83. According to the petitioners, that situation, despite the procedural actions initiated by Mrs. Zoilamerica Narvaez, could not be overcome due to a lack of political will of the legislature and by the absence of any appeal to force this power of the State to initiate the procedure to revoke immunity. Therefore, they considered that in the present case the exceptions contained in Article 46(2), paragraphs (b) and (c) of the American Convention apply.

2. Likewise, the petitioners reported that the National Assembly did not proceed in accordance with the provisions of the Immunity Law, and despite repeated requests to revoke

immunity it did not issue any decision until the case was submitted before the Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission", "Commission" or "IACHR"). Once the case was before the Commission, the State sent to the petitioner - by communication dated December 7, 1999 - the notice of a decision from the Leadership of the National Assembly dated November 25, 1999, adopted at the meeting number 033-99, on her request to revoke immunity.

3. The petitioners maintained that in that resolution, the National Assembly distorted and manipulated the allegations of Mrs. Zoilamerica Narvaez, and that body ruled on the procedure for suspension or loss of status as legislator, governed by the Internal Rules of the Assembly, and not on the procedure to resolve the request for revocation of immunity, governed by the Immunity Law. The petitioners also indicated that the State acted fraudulently, because it sent to the Commission a decision different from the one that was delivered to Mrs. Zoilamerica Narvaez on December 7, 1999.

II. POSITION OF THE STATE

4. The State argued that the legislature did not hinder the alleged victim's access to justice. In this regard, it noted that the First District Judge on Criminal Matters of Managua forwarded to the National Assembly the proceedings before that court, because it had no jurisdiction to hear the lawsuit filed by Mrs. Zoilamerica Narvaez, without first processing the request for revocation of immunity, in accordance with domestic law. The State also argues that the plaintiff had full access to domestic remedies, because she requested the revocation of immunity for Representative Ortega and requested for a preliminary determination if he was exercising his duties as legislator or if he had abandoned his duties.

5. The State asserted that instances of domestic remedies were not exhausted, as the Executive Commission of the National Assembly (Junta Directiva) at its November 25, 1999 meeting unanimously decided to resolve the incidents that had been raised by Mrs. Zoilamerica Narvaez and agreed to create a Special Commission in order to examine and rule on the revocation of immunity of Representative Daniel Ortega, according to the procedure established by the Immunity Law. The State also noted that the resolutions of the Leadership of the National Assembly were not challenged through an amparo action by Mrs. Zoilamerica Narvaez, as prescribed by Article 51 of the Amparo Law. Thus, it requested that the petitioners' claim be declared inadmissible, under the terms of Article 46.1.a of the American Convention.

III. PROCEDURE BEFORE THE IACHR

6. The petition was received on October 27, 1999 and recorded as 12.230. On November 8, 1999, the Commission, pursuant to Article 34 of the Rules in force at the time, began processing the Case 12.230 and requested the State to provide pertinent information, giving it a period of 90 days. On January 13, 2000, the State submitted its comments and noted that domestic remedies were not exhausted regarding this case.

7. Furthermore, the IACHR received information from petitioners on the following dates: January 14, March 27, August 22 and December 13, 2000; and June 26, 2001. On the other hand,

the IACHR received comments from the State on the following dates: September 27, 2000 and April 25, 2001. These communications were duly notified to the State.

8. On October 15, 2001 at its 113th regular periods of sessions, the Commission approved Admissibility Report Number 118/01, which concluded that it had jurisdiction to hear the complaint submitted by the petitioners and decided, based on the arguments of fact and of law and without prejudging the merits of the issue, the admissibility of the complaint for the alleged violations of Articles 8, 24 and 25 in conjunction with Article 1 of the American Convention on Human Rights. Similarly, with regard to Article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, the Commission decided to defer its consideration of the merits analysis, in case the facts were verified. In the same report, based on the provisions of Article 38(2) of its Rules and on Article 48(1)(f) of the American Convention, the IACHR made itself available to the parties to reach an amicable solution.

9. On December 14, 2001 the State submitted additional information which was sent to the petitioners on December 17, 2001. That same day the petitioners reported that "the nature and severity of the violations against Zoilamerica Narvaez", were not subject to be resolved amicably and filed their arguments on the merits. The petitioners submitted additional information on January 2 and 11, 2002.

10. On March 4, 2002 during the 114th regular session of the IACHR, a hearing was held with the parties in attendance. There, the parties were granted a 30-day period to carry out procedures aimed to reach a friendly settlement and to report its outcome to the Commission.

11. On April 4, 2002 the petitioners introduced the terms of an amicable settlement proposal and provided additional information on April 17, 2002. On May 22, 2002 the State submitted its comments on the terms of the amicable settlement proposal submitted by the petitioners.

12. Furthermore, the IACHR received additional information from the petitioners on the following dates: June 14, September 18, October 8, and November 4, 2002; April 24[FN1] and September 2, 2003. These communications were duly notified to the State. Likewise, the IACHR received comments from the State on the following dates: July 18 and October 24, 2002 and February 21, 2003. These communications were duly communicated to the petitioners.

[FN1] Since April 24, 2003 the notes issued by the petitioner were signed only by Ms. Zoilamérica Narváez Murillo.

13. On October 17, 2003 during the 118th regular session of the IACHR a working meeting was held with the parties in attendance.

14. On March 7, 2006, the IACHR requested the parties to provide updated information on the case. On April 10, 2006, the petitioners reported that it had not been possible to reach an amicable agreement and requested a ruling on the merits.

15. The IACHR received additional information from the petitioners on August 29, 2006; January 11, August 12, and December 23, 2007; and April 23, 2008 and from the State on the following dates: May 9, June 12 and November 16, 2006. These communications were duly notified to the parties.

16. On October 1, 2008, the IACHR received a communication from the State through which it forwarded a communication from the alleged victim in which she expressed her intention to end the lawsuit amicably, and also to close the file, requesting confidentiality on the reasons that originate this decision.

17. On May 29, 2009, the IACHR sent a letter to the alleged victim in which it acknowledged the receipt of the note sent by the State and asked her to clarify whether her desire was to reach a friendly settlement under the stipulations of Articles 48 1.f. and 49 of the American Convention or if, on the contrary, her intent was to drop the case and request that it be closed, according to Article 35 of the Rules of the IACHR.

18. On June 9, 2009, the alleged victim sent a communication to the IACHR in which she expressed her willingness to withdraw the lawsuit against the State of Nicaragua.

IV. LEGAL BASIS FOR THE DECISION TO CLOSE THE CASE

19. Article 35 of the Rules of the Inter-American Commission on Human Rights establishes that the petitioner may withdraw its petition or case at any time; in order to do this they shall issue written notice to the Commission. The petitioner's notice will be analyzed by the Commission, who may close the petition or case if it considers it appropriate, or may continue the proceedings in the interest of protecting a particular right.

20. The alleged victim stated in writing and in specific terms to the IACHR her willingness to drop the case filed against the State of Nicaragua and requested to keep confidential the reasons that led to her decision. The IACHR evaluated the arguments noted by the alleged victim. In these circumstances, in accordance with Article 35 of its Rules, the IACHR decides to close this case.

Done and signed in the city of Washington, D.C., on the 12th day of the month of November, 2009. (Signed): Víctor E. Abramovich, First Vice-president; Felipe González, Second Vice-president; Sir Clare K. Roberts, Florentín Meléndez, and Paolo Carozza, members of the Commission.