REPORT No. 19/10
PETITION 898-03
ADMISSIBILITY
FELIPE NERY PAEZ MAURO
PARAGUAY
March 16, 2010

I. SUMMARY

1. On October 28, 2003 the Inter-American Commission on Human Rights (hereinafter "The Commission") received the petition filed by Mr. Felipe Nery Páez Mauro and his attorney Fidel Trigo Granada (hereinafter "the petitioners"), claiming the existence of human rights violations with prejudice to the former (hereinafter "the alleged victim"), under the jurisdiction of the Republic of Paraguay (hereinafter "Paraguay," "the Paraguayan State," or "the State"). The petition alleges that there have been violations of the rights to life, to humane treatment, to a fair trial, to privacy, to property, to equal protection, and to judicial protection, provided for, respectively, by articles 4, 5, 8, 11, 21, 24 and 25 of the American Convention on Human Rights (hereinafter "the American Convention" or the "Convention"), all in connection with the obligation to respect and guarantee the rights established by article 1(1) of the American Convention, with prejudice to Felipe Nery Páez Mauro.

2. The petitioners stated that since November 1999 a plot of land owned by Mr. Páez Mauro had been invaded by Indigenous people of the zone. They affirm that the National Institute for Indigenous People *[Instituto Nacional del Indígena (INDI)]* had signed a contract with the alleged victim to purchase the land, but had breached the contract. They go on to say that in November of 2000 the INDI had obtained a court order preventing Mr. Páez Mauro from using his property, thus violating his right to property. The petitioners said that they filed a civil lawsuit for breach of contract and for damages. In both the rulings of the first and second instance the judgment found for the alleged victim. However, the State failed to comply with the courts' decisions. They further stated that in these judicial proceedings there had been unwarranted delay.

3. The State, in turn, maintained that the court hearing the suit for damages did not incur in any omissions, and that the time used to hand down a judgment was necessary to carry out the procedures in the case. The State also contended that the petitioners were never prevented from using the available and appropriate procedural mechanisms and that at the time the petition was filed they had not exhausted domestic remedies: judgment on a constitutional appeal *[acción de inconstitucionalidad]* was still pending.

4. After examining the positions of the parties, the Inter-American Commission concludes that it is competent to decide on the complaint submitted by the petitioners. This complaint is admissible according to the provisions of article 46 of the American Convention. The Commission decides to continue with the analysis of the merits of the case regarding the alleged violations of articles 8, 21 and 25 of the American Convention, in connection with the general obligation provided for in article 1.1 of same, with prejudice to Mr. Felipe Nery Páez Mauro. The Commission declares the claims regarding alleged violations to articles 4, 5, 11 and 24 of the Convention inadmissible. Therefore, the Commission decides to notify the parties, continue with the analysis of the merits of the case regarding the alleged violations of the American Convention, to publish this admissibility report and to include it in its annual report to the General Assembly of the OAS.

II. PROCESSING BEFORE THE COMMISSION

5. The complaint was submitted by the petitioners on October 28, 2003 before the Executive Secretariat of the Commission. The IACHR forwarded the relevant parts of the petition to the Paraguayan State on February 1, 2005 and requested that it submit its reply within two months. The State requested an extension in an April 4, 2005 communication, and the extension was granted. The State responded to the Commission on May 4, 2005, and this response was transmitted to the petitioners on the 10th of the same month.

6. The petitioners submitted additional observations regarding the petition, which were received on December 27, 2005, January 26, February 16 and 23, and March 7 of 2006; all were duly forwarded to the State. The State submitted additional observations on March 26 of 2006 and September 3 of 2007, which were also duly transmitted to the petitioners.

7. It should be noted that the Commission received a request for precautionary measures for Mr. Felipe Nery Páez Mauro on July 23, 2004. In this request he claimed to have received death threats and to have been the victim of acts against his physical integrity. The Commission requested information from the State and, on November 15, 2004, granted the precautionary measures under number MC 916-04, and requested the Government of Paraguay to provide personal security and protection to Mr. Páez Mauro and his family. From that date onwards, the Commission received various items of information from the petitioner and the State regarding the measures adopted. On April 11, 2008 the Commission informed the petitioners and the State that it had decided to lift the measures.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

8. The petitioners stated that on August 17, 1999, Mr. Páez Mauro had purchased a rural plot of land in a court auction. The title to this property had been transferred to him on October 1, 1999. At the end of October, his property was "invaded by Indigenous people of the Avá Guaraní ethnic group *[Parcialidad Avá-Guaraní*], also known as "Community of San Antonio," who had moved there without Mr. Páez Mauro's consent.

9. They went on to say that on November 12, 1999, the community had delivered a note to the National Institute for Indigenous People (INDI) requesting that Mr. Páez Mauro's property be purchased on their behalf and in another note on the same day they had notified him of their intentions and requested him to initiate the appropriate actions with the INDI. They noted that on November 15, 1999 Mr. Páez Mauro had presented the INDI with an offer to sell his property and had followed the steps required by INDI for purchases of private property for the settlement of Indigenous communities. As part of this process, on April 4, 2000, the director of the National Cadastre Service had communicated the value of the property to the then president of the INDI.

10. The petitioners added that on May 24, 2000, Mr. Páez Mauro, was driving his car when he was intercepted by three armed persons who kept him confined to his vehicle for four hours until police officers arrived on the scene and took him home. Upon his arrival, waiting for him were several members of the National Police, a judge, a prosecutor and the then Vice-Minister of the Interior, all of who, using the excuse of having a court order based on a report that Mr. Páez had a weapons cache, threatened him at gunpoint in front of his wife and children and ransacked his house. Once they left, the alleged victim realized that they had taken 7,500 dollars that belonged to him along with several documents related to the property about which he had ongoing negotiations with the INDI. The petitioners further stated that in June of the same year, police officers again arrived at his house, without a court order, alleging that he had a stolen car. On other occasions he received threats and maltreatment from government officials as well as from his neighbors. Mr. Páez Mauro states that he filed several complaints regarding these facts with judicial authorities who, in one of the cases, had granted him precautionary measures of protection. The petitioners said that these measures were not carried out and this was why, subsequently, they had petitioned the Commission to request precautionary measures in favor of Mr. Felipe Nery Páez.

11. They clarified that it was not until July 2000, after having threatened with filing for court action to remove the 72 Indigenous families from his property that the then president of the INDI approved the purchase of his property, assessing its value at the rate given by the Cadastre, and that INDI signed a private contract with the alleged victim, undertaking to pay the stipulated price, which in the end was not paid. The petitioners also state that in the same month of July, Indigenous leaders wrote to the president of INDI and to the president of the Republic requesting them to adopt the necessary measures so that the purchase of the property would be finalized.

12. They claim that, notwithstanding the foregoing, the INDI obtained a court order dated November 3, 2000, restricting Mr. Páez Mauro's use and enjoyment of his property. In his petition, Mr. Páez stated that since then, he had been forbidden to dispose of his property and he could not live on it, sell it, or rent it. In this respect, he said that in February 2006 he had requested the Office of the General Director of Public Registries to cancel this precautionary measure since it had expired,[1] but that his request had been arbitrarily denied.

13. Because of the aforementioned, on March 19, 2001, the petitioner filed a suit for damages against the Paraguayan State and against the INDI, on the grounds of INDI's breach of contract. The court of the first instance found in his favor on May 29, 2002, ordering the State to pay the established sum for the purchase of the property, plus damages. [2] They go on to say that on December 23, 2002, the appeals court had fully confirmed the first instance judgment, and sentenced the State to pay the sums ordered by the first instance court, plus interest and costs.[3]

14. The petitioners maintain that although they had a final judgment in their favor, the INDI had refused to comply with the orders handed down by the judicial authorities and, in May of 2003, the INDI had filed a constitutional appeal against the judgments of the first and second instances. The petitioner stated that, according Paraguayan procedural law, the Supreme Court of Justice had 60 working days to render judgment, in favor of or against the appeal. He also maintained that article 383 of the Code of Civil Procedure provides that "at the time of the closure of proceedings [for judgment] all discussion will be ended and no more briefs may be submitted nor additional evidence be provided, except for those ordered by the judge in accordance with the authority upon him bestowed for this purpose." The petitioners claim that in spite of this, the judge had served notice to respond to the Office of the Attorney General of the Republic, even after having closed the proceedings for judgment and after the deadline to decide the case had passed.

15. The petitioners argue that the independence of the judiciary was put at risk during the processing of the constitutional appeal because the president of Paraguay himself had made public remarks on the matter[4]; they believe that due to this circumstance, some of the Justices of the Supreme Court had recused themselves and others had been disqualified. In subsequent communications, the petitioners informed the Commission that on July 3, 2007 the Court had dismissed the constitutional appeal.

16. Based on the aforementioned, the petitioners maintain that, with the threats made, the invasion of his home, and the behavior of state agents, the State violated the rights to life and to humane treatment of Mr. Páez Mauro, provided for by articles 4 and 5 of the American Convention. They also

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[1] The petitioner maintained that the Code of Criminal Procedure states that precautionary measures expire after five years, unless they are reinstated before the date of expiration.

[2] Copy of the May 29, 2002 judgment of the 12th Civil and Commercial Court *[Juzgado de Primera Instancia en lo Civil y Comercial del 12° Turno]* sent by the petitioners to the IACHR.

[3] Copy submitted by the petitioners of the judgment of December 23, 2002 of the Fifth Chamber of the Civil and Commercial Appeals Court *[Quinta Sala del Tribunal de Apelación en lo Civil y Comercial].*

[4] In this respect they note that the then president of Paraguay had publicly declared that "the Executive will prosecute judges that rule against the State" and had made other similar declarations.

claim that the State violated articles 8, 11, 21, 24, and 25 of the Convention, with prejudice to Mr. Felipe Nery Páez Mauro.

B. Position of the State

17. The Paraguayan State responded to the petition stating that there had been no violation of Mr. Felipe Nery Páez Mauro's rights to a fair trial nor to due process and that the petitioners had not exhausted domestic remedies before filing with the Commission.

18. The State said that although there had been a final judgment handed down in both the first and second instances of the case of "Felipe Nery Páez Mauro v. the State of Paraguay for Damages," the ruling was not yet enforceable. It maintained that the alleged victim had initiated said proceeding with the suit filed on March 19, 2001 and that within the proceeding several procedures had been carried out until the rulings in the first and second instance, favorable to Mr. Páez Mauro, had been issued.

19. The State went on to say that on March 12, 2003, the INDI filed a constitutional appeal against the aforementioned decisions, of which Mr. Páez Mauro was notified on June 25, 2003. He filed his response on the 30th of June. The State described several judicial procedures and explained that since the Office of the Attorney General of the Republic requested to be a party in the proceedings, given that it had been one in the main proceeding, the Constitutional Chamber of the Supreme Court ordered that it be notified and on October 13, 2004 the Office of the Attorney General had filed a brief with its response. Thus the State explained the participation of the Office of the Attorney General and maintained that the Paraguayan Sate had fully guaranteed the rights of the petitioner regarding the right to a fair trial and to judicial protection and denied the allegation that there had been unwarranted delay.

20. In a September 3, 2007 communication, the State reported that the Supreme Court of Justice had denied the constitutional appeal promoted by the INDI and that consequently Mr. Páez Mauro had submitted to the court of original jurisdiction an execution of judgment that, at that time, was pending decision since the INDI had filed appeals on the grounds that it disagreed on the sum it should pay Mr. Páez.

21. The State contends that it never had refused or prevented access to the petitioner to exercise his right to appeal to the competent organs to recognize his rights and eventually claim damages. It also maintains that the petitioner cannot base himself on subjective criteria to conclude that another branch of the Government has intervened in the case, without any concrete proof. In addition, it claims that the Commission is not an appeals court or court of the fourth instance, and cannot review the decisions of national courts acting within their jurisdiction.

22. Based on the foregoing arguments, the State requests that the Commission declare the petition inadmissible, due to the lack of exhaustion of domestic remedies and because there have been no human rights violations.

IV. ANALYSIS OF ADMISSIBILITY

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

23. Article 44 of the American Convention provides that "[a]ny person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party." Hence, the petitioners have standing to submit a petition to the Inter-American Commission. Therefore the IACHR is competent *ratione personae* to hear the case.

24. The State of Paraguay is party to the American Convention since August 24, 1989, when it deposited its instrument of ratification. The petitioners, in turn, allege the existence of violations to rights provided for by the American Convention. Therefore, for the case *sub examine*, the IACHR is competent *ratione materiae*.

25. The Inter-American Commission is competent *ratione loci*, because the alleged violations of human rights took place in the territory of a State-Party to the American Convention. Likewise, the Commission is competent *ratione temporis* because at the time of the facts alleged the American Convention was already in force for the Paraguayan State.

B. Other requirements for the admissibility of the petition

1. Exhaustion of domestic remedies

26. Article 46(1)(a) of the American Convention provides that for a petition to be admissible in accordance with article 44 of said treaty, it is required that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law. This is recognized by the Commission as a procedural requirement whose purpose is to allow the States to learn of alleged violations to a right protected by the American Convention and, if possible, to have the opportunity to resolve it within their jurisdiction, before access is obtained to the subsidiary jurisdiction of an international venue.

27. The Convention provides that this rule is not applicable when domestic remedies are not available either in fact or in law. Specifically, article 46(2) establishes exceptions to the general principle regarding the exhaustion of domestic remedies: (a) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; (b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or (c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

28. In the instant case, the petitioners have claimed that they have exhausted domestic remedies in the judgments in the first and the second instance that were handed down in the civil suit for damages they lodged against the INDI. The State, for its part, maintained that since INDI filed a constitutional appeal against these judgments, remedies have not been exhausted. The petitioners also have claimed that the Supreme Court of Justice had gone beyond the time periods established by law to rule on the constitutional appeal.

29. It should be noted that in subsequent communications both the petitioners and the State reported that on July 3, 2007 the Supreme Court of Justice had dismissed the constitutional appeal filed by the INDI.

30. The Commission notes that, in fact, the petitioners filed the appropriate motions, in accordance with the legislation in force, with the Paraguayan judicial system, in order to obtain the enforcement of the contract to purchase the aforementioned property and to obtain the payment of damages for the alleged omissions on the part of the State. At the time of writing of this report, domestic

remedies have been exhausted with the ruling on the constitutional appeal. The Commission also notes from the information presented by the State that after the rejection of the constitutional appeal was issued, Mr. Felipe Nery Páez Mauro interposed a motion to collect the amount ordered by the Court for damages. The Commission will analyze the proceedings related to the execution of the judgment, as appropriate, at the merits stage.

31. In addition, the Commission notes that regarding the threats, harassment, and physical injury of which Mr. Páez Mauro claims to have been the victim, although in the record there are copies of some reports filed with judicial authorities, the petitioner did not provide additional information in this respect, and the Commission does not have the necessary information which would allow it to determine that domestic remedies would have been exhausted, or that one of the exceptions provided for by the Convention would be applicable.

2. Timeliness of the petition

32. Article 46(1)(b) of the Convention provides that for a petition to be admissible it must be lodged within a period of six months from the date on which the party alleging violations of his rights was notified of the final judgment.

33. In the instant case, the Commission notes that domestic remedies were exhausted on July 3, 2007, after the petition was lodged. In this respect, compliance with the requirement to file the petition in a timely fashion is intrinsically linked to the exhaustion of domestic remedies.

3. Duplication of procedures and international *res judicata*

34. Article 46(1)(c) provides that admission of a petition requires that the subject of it "is not pending in another international proceeding for settlement" and article 47(d) of the Convention establishes that the Commission will not admit a petition that "is substantially the same as one previously studied by the Commission or by another international organization." In the instant case, the parties have not claimed the existence of either one of these two conditions for inadmissibility, nor can it be inferred from the proceedings.

4. Characterization of the facts alleged

35. The Inter-American Commission must determine if the facts described in the petition, should they be proven, could characterize violations of the rights provided for by the American Convention, pursuant to the requirements of article 47(b) or, in accordance with article 47(c), that the petition must be dismissed because it is "manifestly groundless" or "obviously out of order." At this procedural stage the IACHR must carry out a *prima facie* evaluation, and determine if the petition presents facts that could potentially establish the existence of violations of rights guaranteed by the American Convention, without prejudice to the examination of the merits of the case.

36. The Commission notes that the main contention of the petitioners is that the State of Paraguay, acting through the INDI, violated Mr. Felipe Nery Páez Mauro's right to property because from November 2000, based on a precautionary measure, his right to the use and enjoyment of a lot belonging to him had been denied. In addition, the petitioner alleges that notwithstanding the existence of a valid contract for the INDI to purchase the land and that there were judgments in his favor ordering said Institute to pay for the land, this payment had not been received by him and, moreover, that the proceeding to decide the constitutional appeal filed by INDI had exceeded any reasonable deadline.

37. The State, argues that there were no omissions on the part of the court, which was aware of the damages, and that the petitioners at no point had been impeded from utilizing all pertinent procedural mechanisms. The State also alleged that the petitioners were trying to utilize the Commission as a forth instance court, as a revisionary board of judgments decided by the nation's courts within their sphere of competency. The Commission has many times stated that it does not have the competence to review issues regarding national law or to act as a revisionary board. However, the Commission is

competent to analyze and decide issues which raise an alleged breach by the State of its obligations under the American Convention. In the present case, the Commission has the competence to analyze the facts regarding the right to a fair trial and to judicial protection.

38. Should the petitioners' contentions be proven, the facts could characterize violations of the provisions of articles 8, 21, and 25 of the American Convention in connection with article 1(1) of the same international instrument.

39. After examining the communications of the petitioners the Commission concludes that it does not have sufficient grounds to infer an alleged violation of articles 4, 5, 11 and 24 of the Convention by the Paraguayan State.

V. CONCLUSION

40. The Commission concludes that the case is admissible and that it is competent to hear the complaint filed by the petitioners regarding the alleged violation of the rights provided for by articles 8, 21, and 25 of the American Convention, in connection with the obligations established by article 1(1) of same.

41. The Commission concludes that there are insufficient grounds to infer an alleged violation of articles 4, 5, 11 and 24 of the Convention.

42. Based on the foregoing arguments in fact and in law, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the instant case admissible with respect to the rights provided for by articles 8, 21 and 25 of the American Convention, in connection with the obligations established by article 1(1) of same.

2. To declare the case inadmissible with respect to articles 4, 5, 11 and 24 of the American Convention.

3. To transmit this report to the petitioners and to the State.

4. To continue with its analysis of the merits of the case.

5. To publish this report and include it in the Annual Report of the Commission to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 16th day of the month of March 2010. (Signed: Felipe González, President; Paulo Sérgio Pinheiro, First Vice-president; Dinah Shelton, Second Vice-president; María Silvia Guillén, José de Jesús Orozco Henríquez, and Rodrigo Escobar Gil, members of the Commission).