

REPORT No. 71/10
PETITION 691-04
ADMISSIBILITY
OMAR FRANCISCO CANALES CILIEZAR
HONDURAS
July 12, 2010

I. SUMMARY

1. On August 4, 2004, Mr. Omar Francisco Canales Ciliezar (hereinafter “the petitioner” and/or “the alleged victim”), acting on his own behalf, lodged a complaint with the Inter-American Commission on Human Rights (hereinafter “the Commission,” “the Inter-American Commission,” or “the IACHR”) against the State of Honduras (hereinafter, “the State,” “Honduras” or the “Honduran State”), in which he claimed that on August 9, 2001, he had been dismissed, in an arbitrary fashion and without following the procedure provided for by law, from his position as the First Supernumerary Trial Judge of Juticalpa, Department of Olancho, Honduras.

2. Mr. Omar Francisco Canales Ciliezar claims that the facts described in this petition entail the violation of constitutional provisions directly related to the rights to a fair trial and to judicial protection set forth in Articles 8 and 25 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”). He also alleges violations of Articles XVIII and XXIV of the American Declaration of the Rights and Duties of Man (hereinafter the “American Declaration”) and of Articles 8 and 28 of the Universal Declaration of Human Rights. He states that he has complied with the admissibility requirements and, in particular, that he has exhausted the resources afforded by domestic jurisdiction. In connection with this, he rejects the State’s claims regarding the need to file for *amparo* relief, holding that it is not applicable to his case since it is a remedy not covered by the domestic laws that apply to him, since it is a remedy of an extraordinary nature, and since, in addition, it would be heard by the same body that issued the order for his dismissal that he is challenging in this claim.

3. The State asks the IACHR to declare this petition inadmissible on the grounds that the petitioner has not exhausted the available domestic remedies. Specifically, it notes that in accordance with the Constitution, the petitioner could have filed for *amparo* relief to secure a domestic solution to his alleged situation.

4. After examining the parties’ positions in light of the admissibility requirements set out in Articles 46 and 47 of the American Convention, the Commission concludes that it is competent to hear the claim and that the petition is admissible as regards the alleged violation of the rights protected in Articles 8 and 25 of the American Convention, in conjunction with Articles 1.1 and 2 thereof, under the principle of *iura novit curia*. In addition, the Commission resolves to give notice of this decision to the parties, to publish it, and to include it in its Annual Report to the General Assembly of the Organization of American States (OAS).

II. PROCESSING BY THE INTER-AMERICAN COMMISSION

5. On August 4, 2004, the Commission received a complaint lodged by Mr. Omar Francisco Canales Ciliezar and registered it as No. 691-04. On October 13, 2006, it forwarded the relevant parts of the complaint to the State and requested that it return its reply within a period of two months, in compliance with the provisions of Article 30.3 of the Rules of Procedure of the Inter-American Commission of Human Rights (hereinafter “the Rules of Procedure”). The State’s reply was received on December 12, 2006.

6. In addition, the IACHR received information from the petitioner on the following dates: April 18, 2007; September 4, 2007; January 29, 2008; June 4, 2008; December 18, 2008; and April 14, 2009. Those communications were duly forwarded to the State.

7. Similarly, the IACHR received comments from the State on the following dates: June 26, 2007; January 18, 2008, May 1, 2008; September 15, 2008; and January 21, 2009. Those communications were duly conveyed to the petitioner.

III. POSITIONS OF THE PARTIES

A. Petitioner

8. The petitioner states that he began his employment with the Supreme Court of Justice of the Republic of Honduras, in the position of First Supernumerary Trial Judge of Juticalpa, Olancho department, on November 16, 2000, under appointment order No. 1578 of November 10, 2000. He reports that on August 9, 2001, by means of order No. 1050, he was dismissed by the plenary of the Supreme Court of Justice of the Republic of Honduras, in accordance with a recommendation made by that court's Criminal Chamber, for allegedly having incurred in "irregularities in the performance of his duties."

9. He claims that the Criminal Chamber recommended his immediate dismissal to the plenary of the Supreme Court of Justice, alleging that he had committed irregularities in cases placed before him. However, he maintains that when those cases were referred to higher courts on appeal, his resolutions were upheld, and so he claims to be ignorant of the alleged irregularities referred to by the Criminal Chamber. He also states that the resolution issued by the Criminal Chamber – and later taken into consideration by the plenary of the Supreme Court of Justice of the Republic of Honduras in adopting its decision – was not made available to him because he was allegedly denied a photocopy of his administrative file.

10. He adds that the Criminal Chamber summoned him to an evidentiary hearing, with which it assumed the powers of other agencies. In this regard, the petitioner states that Article 319 of the Constitution does not grant the Criminal Chamber the authority to resolve administrative conflicts, a power reserved exclusively for the Personnel Administration Directorate. He therefore claims that this constituted a violation of the principle of the presumption of innocence, which protects all accused persons from being declared guilty save by a competent authority and through due process. He further claims that the Criminal Chamber refused to allow him to present evidence in his defense and failed to hear him.

11. In connection with this, he notes that under Honduran legislation, the Judicial Career Law, regulating relations between the judiciary and its officers, provides no grounds for dismissal on account of "irregularities in the performance of duties." He explains that this law sets out the procedure to be followed in dismissing an employee or officer of the judiciary, and that this procedure was not observed in his case. Specifically, he notes that authority to investigate the actions of judicial employees or officers lies with the Inspectorate of Courts, and the authority to hear them at trial lies with the Personnel Administration Directorate, both of which are subsidiary bodies of the Supreme Court of Justice, pursuant to the terms of Article 6 of the Judicial Career Law. He therefore maintains that his dismissal by the plenary of the Supreme Court violated the internal procedural regulations, to his detriment.

12. On account of that situation, the petitioner reports that on August 24, 2001, he filed an objection remedy with the Council of the Judicial Career, the agency responsible for overseeing the rights of judicial employees and officers, describing the arbitrary actions and violations committed by the Supreme Court of Justice. He states that on September 4, 2003, that Council ruled his application groundless. According to the petitioner, the Council did not prove the legality of the grounds for his dismissal and illegally admitted evidence submitted by the Supreme Court. He notes that the Council took more than two years to give its decision, when judgments are to be handed down within five working days after assessing the evidence.

13. He reports that he was served notice of the judgment issued by the Council of the Judicial Career, a dependent body of the Supreme Court of Justice, on February 3, 2004.

14. In light of the facts described above, he claims that he suffered violations of the rights enshrined in Articles 80, 82 and 90.1 of the Constitution of Honduras, as they correlate to Articles 8 and 25 of the American Convention, Articles XVIII and XXIV of the American Declaration of the Rights and Duties of Man, and Articles 8 and 28 of the Universal Declaration of Human Rights.

15. With reference to the exhaustion of domestic remedies, Mr. Canales Ciliezar claims that the available resources have been exhausted because in accordance with the provisions of the Judicial Career Law,¹ no regular remedies may be filed against final rulings issued by the Council of the Judicial Career.

16. The petitioner adds that Honduran law recognizes the remedy of *amparo* relief as a constitutional guarantee, which is admissible as a special remedy that may or may not be invoked. He notes that it must be borne in mind that *amparo* suits are heard by the Supreme Court of Justice, which in turn manages and oversees the Council of the Judicial Career. He explains that the Council comprises two full justices from the Supreme Court of Justice, one Appeals Court judge, a trial judge, and a representative of the Public Prosecution Service.

17. The petitioner therefore disputes the State's claims and maintains that the Inter-American Court has established, in its jurisprudence, that the formal recognition by the law of certain remedies is not itself enough, but also that the effectiveness of those remedies in protecting the rights in question must be a reasonable possibility – a circumstance, he claims, not found in the case at hand, since any *amparo* suit would ultimately be heard by one of the chambers of the Supreme Court of Justice itself.

18. In addition, the petitioner notes that between the enactment of the Judicial Career Law (on June 18, 1980) and 2008 – a period of almost 30 years – only one case involving a judicial official's claim for unjustified dismissal has been resolved through *amparo* proceedings. Furthermore, that official was from the lower echelons, and the precedent was set four years after the instant case was lodged with the IACHR. He claims that this indicates and confirms the fact that even if, in breach of a general rule of the State such as the one set out in the Internal Regulations of the Council of the Judicial Career, *amparo* relief were admissible against the final decisions of that body, such a remedy would be ineffective in defending and safeguarding the basic rights of unfairly dismissed judicial officers and therefore need not be exhausted.

B. State

19. The State claims that it has been established before the IACHR that the petitioner was dismissed on August 9, 2001, for irregularities in the performance of his duties, under an order issued by the plenary of the Supreme Court of Justice. It focuses its arguments on maintaining that the petitioner has not exhausted the resources available under domestic law and that, consequently, the petition must be ruled inadmissible in accordance with the terms of the Convention.

20. Specifically, the State holds that since Mr. Canales Ciliezar's petition claims that his rights enshrined in Articles 80, 82, and 90 of the Constitution of Honduras were violated, he should have filed for *amparo* relief, as the final domestic judicial remedy available under domestic law. The State notes that Article 183 of the Constitution provides that:

"The State recognizes the guarantee of *amparo*; consequently, all complainants, or any other person acting on their behalf, shall be entitled to file for *amparo* relief:
1. To maintain or reinstate their enjoyment of the rights and guarantees established in the Constitution."

¹ The petitioner explains that Article 31 of the Internal Regulations of the Council of the Judicial Career provides that "no remedies of any kind, either regular or special, shall be admissible against final decisions handed down by the Council of the Judicial Career."

21. In that sense, the State holds that the petitioner, as a legal professional and former judge, was or should have been aware that the constitutionally recognized guarantee of *amparo* takes precedence over the provisions of any regulations. It notes that this position has been held by the Constitutional Chamber of the Supreme Court of Justice, which has on repeated occasions admitted *amparo* filings lodged against resolutions handed down by the Council of the Judicial Career; and that consequently, the Supreme Court of Justice cannot be found to have disregarded the content of Article 31 of the Internal Regulations of the Council of the Judicial Career as the petitioner claims.²

22. In addition, states that there are also precedents in which the Supreme Court of Justice, in addition to admitting such remedies, has also found the resolutions handed down by the Council of the Judicial Career to be in violation of constitutional rights. In particular, it cites the case of a former employee of the judiciary who invoked *amparo* relief to challenge a resolution of that Council, which the Constitutional Chamber of the Supreme Court of Justice found, in a judgment of January 24, 2007, to be in violation of his constitutional guarantees in that it had failed to conduct an objective appraisal of the evidence put forward during the processing of the challenge to his dismissal.

23. It holds that those precedents indicate that the guarantee of *amparo* is applicable to the decisions of the Council of the Judicial Career, pursuant to the provisions of Constitution, and that the Supreme Court has so ruled. It adds that the argument that resolutions of the Council of the Judicial Career admit no remedies is groundless, and that it consequently holds that the petitioner simply ignored the domestic remedy that could have protected him, preferring to take his case directly to the Inter-American Commission.

24. Second, the State maintains that there are no grounds for the petitioner's claim that the filing of *amparo* relief would be ineffective because it would be resolved by the Supreme Court of Justice, the same body that issued the order that he challenges, making it, in the petitioner's view, neither an impartial or effective venue. Thus, it holds that the petitioner is mistaken in believing that Supreme Court of Justice, comprising 15 justices appointed by a Nominations Board composed of various national institutions and elected by the National Congress of the Republic, would have a particular interest in causing him harm and disregarding his rights.

25. In addition, states that none of the justices who were members of the Supreme Court of Justice at the time of the petitioner's dismissal currently serve on it and, even were that the case, the jurisdictional and administrative functions of the Supreme Court of Justice are legally demarcated and separate. It states that the Supreme Court of Justice's jurisdictional function cannot and must not be confused with the administrative activity carried out by the agencies of the judiciary, in this case, the authorities of the Judicial Career, which are legally responsible for resolving administrative matters involving members of the judiciary's staff and their earnings, promotions, and sanctions. Thus, it holds that although the agencies of the Judicial Career are within the hierarchy of the Supreme Court of Justice, that Court is also governed, as an authority of the State, by a series of provisions that include the principle of legality.

26. In light of the above, it concludes by maintaining that the prior exhaustion of domestic remedies requirement has not been met, in that the remedy of *amparo* relief was available to the petitioner and he chose not to make use of it. In addition, it maintains that the instant case involves none of the exceptions applicable to that requirement that are provided for in the Convention, since it has been shown that: (1) domestic law provides due legal process for protecting the allegedly violated rights,

² The precedents which it cites are the following: (1) Amparo filing 1491-051P47-06, brought by a former officer of the judiciary serving as a public defendant, admitted by the Constitutional Chamber on November 21, 2005; (b) Amparo filing 99-674-05, brought by a former officer of the judiciary serving as a public defendant, admitted by the Constitutional Chamber on April 18, 2005; (c) Amparo filing 325-525-05, brought by a former officer of the judiciary serving as a Full Judge of the First Court of Appeal of Francisco Morazán, admitted by the Constitutional Chamber on March 28, 2005; (d) Amparo filing 410-526-05, brought on behalf of a former officer of the judiciary serving as a Full Judge of the First Court of Appeal of Francisco Morazán, admitted by the Constitutional Chamber on April 11, 2005.

through the filing of an *amparo* remedy; (2) the petitioner has not been hindered in accessing or exhausting the remedies offered by domestic jurisdiction; rather, they were not invoked on his own decision, based on a groundless and subjective opinion; and (3) there has been no unwarranted delay in deciding on the remedies brought.

27. Consequently, the State asks for the petition to be ruled inadmissible since the remedies offered by domestic jurisdiction have not been exhausted as required by the American Convention.

IV. ANALYSIS

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

28. The petitioner is entitled, under Article 44 of the American Convention, to lodge complaints with the IACHR. The petition identifies, as its alleged victim, an individual person with respect to whom the Honduran State had agreed to respect and ensure the rights enshrined in the American Convention and in other international instruments. The IACHR therefore has competence *ratione personae* to hear this petition.

29. The Commission has competence *ratione loci* to deal with the petition, since it alleges violations of rights protected by the American Convention occurring within the territory of a state party thereto.

30. The IACHR has competence *ratione temporis*, in that the alleged facts took place when the obligation of respecting and ensuring the rights enshrined in the Convention was already in force for the State of Honduras, which ratified the American Convention on September 5, 1977. Finally, the Commission has competence *ratione materiae*, since the petition describes violations of human rights that are protected by the American Convention.

31. Regarding the rights of the Universal Declaration of Human Rights that the petitioner invokes, the IACHR notes that it may refer to non-regional treaties in interpreting the inter-American instruments but that it lacks competence to establish violations with respect to the Universal Declaration. Regarding the alleged violations of Articles XVIII and XXIV of the American Declaration, it should be noted that with the entry into force of the American Convention for Honduras, that instrument, and not the Declaration, became the source of applicable law,³ provided that the petition claims the alleged violation of rights that are substantially identical in both instruments. In this case, the Declaration rights that the Honduran State is alleged to have violated are protected by the Convention and the facts that gave rise to the petitioner's claim took place in the year 2001 – in other words, after the American Convention came into effect for Honduras. Consequently, if so required by the analysis of the nature of alleged facts, the Commission will only refer to the alleged violations of the Convention and not to those of the Declaration.

B. Other requirements for admissibility

1. Exhaustion of domestic remedies

32. Article 46.1.a of the American Convention states that, for a complaint lodged with the Inter-American Commission to be admissible under Article 44 of the Convention, the remedies available under domestic law must have first been pursued and exhausted in accordance with generally recognized

³ In ruling on the legal force of the American Declaration, the Court has held that, in principle, for those states that are parties to the Convention, the specific source of their obligations with respect to the protection of human rights is the Convention itself. I/A Court H. R., *Advisory Opinion OC-10/89 (Interpretation of the American Declaration of the Rights and Duties of Man)*, July 14, 1989, paragraph 46. The Inter-American Commission has made similar rulings; see: Report 38/99, Argentina, Annual Report of the IACHR 1998, paragraph 13; and Report 112/99, Colombia, Álvaro Lobo Pacheco *et al.* ("19 Merchants"), September 27, 1999, paragraph 17.

principles of international law.⁴ This requirement is intended to facilitate the domestic authorities' examination of the alleged violation of a protected right and, if appropriate, the resolution of it before it is brought before an international venue.

33. The prior exhaustion requirement applies when the national system does in fact offer available resources that are adequate and effective for remedying the alleged violation. Thus, Article 46.2 stipulates that the requirement need not be observed if the domestic legislation does not afford due process of law for the protection of the right in question, if the alleged victim was denied access to the remedies offered by domestic law, or if there was an unwarranted delay in issuing judgment on those remedies.

34. As the Inter-American Court has established, whenever a State claims that a petitioner has not exhausted the relevant domestic remedies, it is required to demonstrate that the remedies that have not been exhausted are "suitable" for remedying the alleged violation and that the function of those resources within the domestic legal system is applicable to protecting the violated juridical situation.⁵

35. In the case at hand, the parties disagree on whether this conventional requirement has been met. Thus, the State claims that the remedies offered by domestic jurisdiction were not exhausted, indicating that the petitioner failed to exhaust the *amparo* remedy afforded by domestic law under the Constitution for the protection of the rights that he claims were violated. In this regard, and to provide evidence of the effectiveness of that procedural remedy, the State submitted a copy of a judgment ruling favorably on the *amparo* remedy filed by a judicial officer alleging that his dismissal had violated his constitutional rights.

36. In turn, the petitioner claims that as expressly stated in the Internal Regulations of the Council of the Judicial Career, such an *amparo* filing was not admissible and that Honduran law recognizes *amparo* relief as a constitutional guarantee that is admissible as a remedy of a special nature that may or may not be invoked.

37. In connection with this, the Commission believes it is appropriate to indicate that the relevant part of Article 31 of the Internal Regulations of the Council of the Judicial Career provides as follows:

"no remedies of any kind, either regular or special, shall be admissible against final decisions handed down by the Council of the Judicial Career."

38. The Commission notes that the State has not disputed the content of this provision from the Council's Regulations, nor has it disputed that this provision forms part of Honduran law. Consequently, the Commission believes that the decision of the Council of the Judicial Career resolving to uphold the alleged victim's dismissal could not be challenged, pursuant to the cited provision of Article 31 of its Regulations. In other words, the Commission believes that the petitioner did not have a regular judicial remedy with which to challenge the decision made by the Council of the Judicial Career or to question his dismissal at a judicial venue.

39. In light of the above comments and of the information contained in the case file, the Commission finds that for the purposes of admissibility, it must apply the terms of the aforesaid Article 46.2.a of the American Convention, which establishes an exception to the requirement of exhausting

⁴ See: I/A Court H.R., *Chaparro-Álvarez and Lapo-Íñiguez v. Ecuador Case*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, paragraph 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, paragraph 50; I/A Court H.R., *Acevedo Jaramillo et al. v. Peru Case*. Judgment of February 7, 2006. Series C No 144, paragraphs 122 *et seq.*; *Ximenes Lopes v. Brazil Case*. Preliminary Objection. Judgment of November 30, 2005, Series C No. 139, paragraph 4; etc.

⁵ Article 31.3 of the IACHR's Rules of Procedure. See also: I/A Court H. R., *Velásquez Rodríguez v. Honduras Case*. Judgment of July 29, 1988, Series C No. 4, paragraph 64.

domestic remedies when national law does not provide due legal process for protecting the right in question.

40. The Inter-American Commission also notes that the invocation of Article 46.2's exceptions to the prior exhaustion rule bears an intimate relation with the possible violation of certain rights protected by the American Convention, such as the guarantee of access to justice. However, by its very nature and purpose, Article 46.2 is a provision with autonomous content vis-à-vis the Convention's substantive precepts. Consequently, whether or not the Convention's exceptions to the rule requiring the prior exhaustion of domestic remedies are applicable in the case at hand must be decided prior to and in isolation from the analysis of the merits of the case, and that is because it depends on a standard of appreciation that is different from the one used to determine whether or not Articles 8 and 25 of the American Convention have been violated. It should be noted that the causes and effects that have prevented the exhaustion of domestic remedies in the case at hand will be analyzed, as relevant, in the IACHR's report on the merits of the controversy, in determining whether or not the American Convention was in fact violated.

V. Deadline for submitting the petition

41. According to Article 46(1)(b) of the Convention, for a petition to be admitted it must be submitted within six months of the date on which the petitioner was notified of the final decision in the domestic jurisdiction. Nonetheless, as provided in Article 32(2) of the IACHR's Rules of Procedure, in those cases in which the exceptions to prior exhaustion rule apply, the petition must be submitted within a time Commission considers reasonable. To this end, the Commission should consider the date of the alleged violation of rights and the circumstances of each case.

42. In the petition under study, the IACHR considers that the exception to the prior exhaustion requirement provided for at Article 46(2)(a) of the American Convention applies. Mindful of the date on which the dispute that led to this petition began, the IACHR concludes that the petition, submitted on August 4, 2004, was submitted in a reasonable time, and, therefore, it considers that the requirement established at Article 46(1)(b) of the Convention has been satisfied.

VI. Duplication of international proceedings and *res judicata*

43. Nothing in the case file indicates that the substance of the petition is pending in any other international settlement proceeding or that it is substantially the same as any other petition already examined by this Commission or another international body. Hence, the requirements set forth in Articles 46.1.c and 47.d of the Convention have been met.

VII. Characterization of the alleged facts

44. As the Commission has stated on other occasions, this stage in the proceedings is not for establishing whether or not a violation of the American Convention was committed. In ruling on admissibility, the IACHR must simply decide whether the claim describes incidents that could tend to establish a violation of the American Convention, as required by Article 47.b, and whether the petition is "manifestly groundless" or "obviously out of order," as stipulated in Article 47.c. The level of conviction regarding those standards is different from that required in deciding on the merits of a complaint. At this juncture the IACHR must perform a *prima facie* evaluation, which in no way represents a preliminary judgment or untimely opinion on the merits. Its own Rules of Procedure sets out the distinction that exists between the evaluation performed in order for a petition to be ruled admissible and the one carried out to determine whether the State is or is not responsible, by establishing clearly separate phases for analyzing admissibility and analyzing the merits.

45. In the case at hand, the petitioner claims that he was dismissed from his position arbitrarily and in the absence of due process. According to the facts set out by the petitioner, the Commission finds that the petitioner has made allegations that are not "manifestly groundless" or "obviously out of order" and that, if proven, could tend to establish violations of Articles 8 and 25 of the

American Convention, respectively, in conjunction with Articles 1.1 and 2 thereof, pursuant to the principle *iura novit curia*.

46. Since the claim is not obviously groundless or out of order, the Commission believes the requirements contained in Articles 47.b and 47.c of the American Convention to have been met with respect to this aspect of the petition.

VIII. CONCLUSIONS

47. The Commission concludes that it is competent to hear the petitioner's claims regarding the alleged violation of Articles 8 and 25 of the American Convention, in conjunction with Articles 1.1 and 2 thereof, and that those claims are admissible under the requirements established by Articles 46 and 47 of the American Convention.

Based on the foregoing considerations of fact and law, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To rule this claim admissible as regards Articles 8 and 25 of the American Convention, in conjunction with Articles 1.1 and 2 of the American Convention.
2. To give notice of this decision to the Honduran State and to the petitioner.
3. To continue with its analysis of the merits of the complaint.
4. To publish this decision and to 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 12th day of the month of July 2010.
(Signed): Felipe González, President; Paulo Sérgio Pinheiro, Vice-President; Dinah Shelton, Second Vice-President; Luz Patricia Mejía Guerrero, María Siliva Guillén, José de Jesus Orozco Henríquez, and Rodrigo Escobar Gil, Members of the Commission.