

REPORT No. 98/11¹
DECISION TO ARCHIVE
PETITION 664-02
VENEZUELA
July 21, 2011

ALLEGED VICTIM: Vicente Antonio Amengual Sosa

PETITIONER: Vicente Antonio Amengual Sosa

ALLEGED VIOLATIONS: Articles 8 and 11 of the American Convention on Human Rights

PROCESSING BEGAN: May 8, 2007

I. THE PETITIONER'S POSITION

1. The petitioner argued that in 1998 he was designated first Associated Judge of the Superior Court for Civil and Administrative Matters (Juzgado Superior en lo Civil y de lo Contencioso Administrativo) of the judicial district of the Central Region, based in Maracay. He indicated that he was appointed Provisional Judge of the Superior Court for Civil and Administrative Matters of the Judicial District of the State of Aragua by means of official note No. TPE-01-1428 from the Judicial Commission of the Supreme Court of Justice (hereinafter "Judicial Commission") of December 10, 2001.

2. He indicated that on January 22, 2002, the Judicial Commission, by official note No. TPE-02-108, annulled his appointment arbitrarily due to "the observations that were made in the office of the Commission." He alleged that he was not allowed to exercise his right to defense, and that this decision was made without justification given that at the moment of his "dismissal" he was unaware of the observations mentioned in the abstract by the Judicial Commission. He alleged that he only learned of those observations three years later, and that he was never subjected to any sanction or disciplinary proceeding during the time he worked in the judicial branch.

3. The petitioner argued that he filed a motion for reconsideration before the Judicial Commission against the decision to "remove" him, which was not decided upon. He noted that he filed a motion to annul an administrative act, and an *amparo* action before the Political-Administrative Chamber of the Supreme Court of Justice. He indicated that by means of such actions he challenged his not having been allowed to exercise his right to defense, and sought the payment of salary not received up to the moment of his effective reinstatement.

4. He indicated that on May 16, 2006, the motion for annulment was found to be without merit. He alleged that the judgment of the Political-Administrative Chamber did not rule on the fundamental purpose of this claim, which was the violation of the right to defense due to the impossibility of contradicting the observations that gave rise to his "removal." He indicated that the judgment was based on the fact that the alleged victim was a temporary judge, thus his appointment could be set aside at any time, without the need for any procedure whatsoever. He indicated that this decision exhausted domestic remedies.

5. He noted that he filed a motion for review (*recurso de revisión*) before the Constitutional Chamber of the Supreme Court of Justice, which found it without merit. He indicated that in that decision there was a dissenting opinion by one judge, who stated that the decision of "destitution" from his position was a violation of due process and that he would have been allowed to attack the unspecified observations that justified his "destitution."

¹ As provided for in Article 17(2)(a) of the Rules of Procedure of the Commission, Commissioner Luz Patricia Mejía Guerrero, of Venezuelan nationality, did not participate in the deliberation or decision in the instant case.

6. He considered that this constituted a violation of the right to defense, in violation of Articles 8 and 11 of the American Convention on Human Rights (hereinafter "the American Convention").

II. THE STATE'S POSITION

7. As of the date of the approval of this decision to archive, the Commission did not receive the State's observations concerning the admissibility of the petition.

III. PROCESSING BEFORE THE INTER-AMERICAN COMMISSION

8. The IACHR recorded the claim under number 670-02, and on June 20, 2003, it considered that it did not satisfy the requirements of Article 26 of its Rules of Procedure in force at that time. On May 10, 2005, the petitioner presented additional information, which was evaluated, and on May 8, 2007, the Commission proceeded to forward the claim to the State, which was given two months to submit its observations.

9. On December 5, 2007, the petitioner submitted additional information, which was forwarded to the State for its observations. On February 25, 2008, the petitioner presented additional information, which was forwarded to the State for its observations. On January 9, 2009, the Commission reiterated its request for information to the State.

10. On January 25, August 19, and September 14, 2009, the petitioner submitted additional information, which was forwarded to the State for its observations on September 22, 2009. On November 4, 2009, the State requested an extension to submit its observations, which was granted by the Commission. On May 3, 2011, the petitioner submitted a brief in which he stated his will to withdraw his petition.

IV. GROUNDS FOR THE DECISION TO ARCHIVE

11. Both Article 48(1)(b) of the American Convention and Article 42 of the Commission's Rules of Procedure establish that within the processing of a petition, once the information is received or the time period set has lapsed without it being received, the IACHR will verify whether the reasons for the petition or communication exist or subsist, and if they do not it will order that the case be archived.

12. With respect to withdrawal, Article 41 of the IACHR's Rules of Procedure indicates that the petitioner may withdraw his petition or case at any time, to which end he should so state in writing to the Commission, which may archive the petition or case if it considers it to be in order.

13. In view of the brief of withdrawal submitted by the petitioner, the Commission, in keeping with Articles 41 and 42 of the Rules of Procedure of the IACHR, as well as Article 48(1)(b) of the American Convention, decides to archive this petition.

Done and signed in the city of Washington, D.C., on July 21, 2011. (Signed): Dinah Shelton, President; José de Jesús Orozco Henríquez, First Vice-Presidente; Rodrigo Escobar Gil, Second Vice-Presidente; Paulo Sérgio Pinheiro, Felipe González, and María Silvia Guillén, Commissioners.