

REPORT No. 42/12
DECISION TO ARCHIVE
PETITION 553-03
ECUADOR
March 20, 2012

ALLEGED VICTIM: Hugo Napoleón Sánchez Garcés

PETITIONER: Andrés Nájera Obando and Silvia Nájera Vallejo

ALLEGED VIOLATIONS: Article 25 of the American Convention on Human Rights

DATE PROCEEDINGS BEGAN: September 29, 2004

I. PETITIONER'S POSITION

1. On July 25, 2003, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") received a petition filed by Andrés Nájera Obando and Silvia Nájera Vallejo (hereinafter "the petitioners") alleging the responsibility of the State of Ecuador for failure to comply with the decision of April 3, 2000, issued by the Constitutional Tribunal (hereinafter "CT"), to the prejudice of Hugo Napoleón Sánchez Garcés (hereinafter "the alleged victim").

2. The petitioners claimed that the alleged victim served in the National Bank for Development (hereinafter "BNF") and that his position was illegally removed by the authorities. They maintained that they filed an administrative action in order that he should be paid due compensation, but the claim was rejected without valid reasons. They alleged that they filed a constitutional *amparo* action, which was rejected by the Contentious Administrative District Court (hereinafter "TCA") with inconsistent reasoning. They alleged that they appealed this decision and that on April 3, 2000 the CT decided the appeal and required the BNF to settle adequate indemnity on the appellants. They maintain that the BNF has not complied.

3. They alleged that the laws of Ecuador governing the constitutional *amparo* action establish that responsibility for ensuring compliance with the CT's decisions remains with the court that examined the action at first instance, in this case with the TCA. They alleged that this Court did not require the BNF to comply with the judgment and that when steps for its fulfillment were still being taken; the TCA ordered the case file to be archived, without the decision of the CT being carried out. They argued that this decision violated the rights granted in the *amparo* action. They stressed that they did not lodge an appeal against this order because the filing of the said remedy in a similar case only led to an unjustified and pointless delay.

4. With regard to the exhaustion of domestic remedies, the petitioners alleged that they repeatedly approached the CT, which ordered the TCA to carry out its decision. They also alleged that they contacted the Ombudsman, who then approached the TCA so that it would comply with the decision in question. They maintained that the justices replied that the case had been archived. Finally, they indicated that these steps were taken less than six months from the presentation of the petition, and that the claim is based on the failure to execute the judgment.

II. THE STATE'S POSITION

5. The State pointed out that, via an administrative decision of April 30, 1999, the BNF notified a group of its employees regarding the removal of the budgetary item financing the positions they held, and that it had provided due compensation to all those affected, in accordance with the law. It indicated that in 1999, a group of former BNF employees filed a constitutional *amparo* action against the Ministry of Finance and Public Expenditure requesting that this body issue a Ministry Resolution granting the maximum level of compensation for the job losses. It maintained that the remedy was allegedly based on a law which was no longer in force, and that the TCA decided that

the Law does not state the date or month in which the Ministry of Finance must pass a Ministerial Resolution granting the maximum amount of compensation, so that the argument there has been an unlawful omission on the part of the public authority is invalid, and that once the Law on Public Finance Reform came into force on the very day that the personnel were notified of the job losses...the power of the Finance Minister to issue a Ministry Resolution ceased...and, lastly, that the appellants were paid compensation...

6. The State maintained that the CT issued the *amparo* appeal decision on April 3, 2000, overturning the TCA's decision, and addressed the Ministry of Finance and Public Expenditure so that it would fulfill its obligation to formalize the amount of compensation. It alleged that in these circumstances, the petitioner requested the Constitutional Tribunal to compel the lower court judge to fulfill the *amparo* as decided. The State maintained that neither the claimants, nor the relevant public authority, or the State General Procurator's Office requested clarification or amplification of the decision issued by the CT, which was only available for communication to the Ministry of Finance and Public Expenditure. It alleges that, therefore, the judgment was carried out and the CT has no competence in the matter.

7. It alleged that in September 2000, the TCA decided to archive the case file and in November 2000, the CT issued an order indicating that the job losses affected not only the quality of life of those who had initiated the action but their families, and ordered official recognition of the compensation owed to the claimants. It alleged that in December 2000, the BNF contacted the CT stressing that the constitutional *amparo* action was not directed against the BNF, and that therefore the decision was illegal and inadmissible. In February 2001, the CT rejected the assessments issued by the BNF.

8. Besides, it maintained that on June 4, 2001, the BNF reported to the Constitutional Tribunal that those BNF employees whose budgetary item had been removed received the compensation provided for by law (160'000.000.00 Sucres) and requested that the proceedings by the Constitutional Tribunal be declared null and void. The State alleges that in response, on June 19, 2001, the Second Chamber of the CT ordered that Resolution No. 936-99RA be followed and emphasized that the first instance judge should order compliance with the judgment.

9. The State alleged that on October 1, 2001, the TCA consulted the CT on all that had been resolved by the Second Chamber in the case 936-99RA, and that on November 1, 2001, it was established that the Second Chamber's decision of April 3, 2000, regarding the instance judge's duty to execute the final decision should be followed. It argued that on November 27, 2001, the plaintiffs filed a new brief requesting the Second Chamber of the CT to order the First Chamber of the TCA to enforce the resolution. On January 4, 2002, the CT decided upon the permanent referral of the proceedings to the instance court in order for it to assume responsibility.

10. The State alleged that the petitioner filed its petition before the IACHR on June 25, 2003, that is 39 months after the issuance of the CT's final resolution of April 3, 2000, thus outside the six month time limit established in Article 46 of the American Convention. It also alleged that the judgment was issued in accordance with due process guarantees and that therefore it did not violate Articles 8 and 25 of the American Convention to the prejudice of the alleged victims. Finally, the State alleged that the petitioner failed to provide information on the contentious administrative claim filed against the BNF, for the same facts at issue. Therefore, the State requested that the IACHR declare the petition inadmissible.

III. PROCESSING BEFORE THE IACHR

11. The petition was registered under number 553-03 and after a preliminary analysis; the IACHR sent it to the State for observations. On March 17, 2005, the State filed its response, which was sent to the petitioners for their observations. On July 27, 2005, the petitioners filed their response which was sent to the State for its observations.

12. On September 8, 2005, the petitioners filed additional information which was sent to the State for its observations. On April 7, 2009, the IACHR requested updated information from both parties. In view of the silence of the parties, on July 6, 2010, the IACHR requested updated information from the petitioner in order to establish whether the grounds for the petition still existed and notified the possibility of a decision to archive. The information was not received by the Commission.

IV. GROUNDS FOR A DECISION TO ARCHIVE

13. Both Articles 48.1.b of the American Convention and 42 of the IACHR's Rules establish that during the processing of a petition, after the information has been received, or after the period established has elapsed and the information has not been received, the Commission shall ascertain whether the grounds for the petition still exist. If they do not, the Commission shall order the record to be closed.

14. This petition involves the allegation of the rights enshrined in Article 25 of the American Convention. The State alleged that the petition was inadmissible because the petitioner's allegations failed to show a colorable claim of violations of the American Convention; and because the petition had not been filed in a timely fashion.

15. According to the record, the petitioners filed their last brief on September 8, 2005, and they failed to submit updated information in response to both requests made by the IACHR on April 2009 and July 2010. In view of the above it is not possible to continue with the examination of the claim or to ascertain whether the grounds for the initial petition still exist, and therefore the Commission decides to archive the petition pursuant to Articles 48.1.b of the American Convention and 42 of the IACHR's Rules.

Done and signed in the city of Washington, D.C., on the 20th day of the month of March 2012.
(Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Felipe González, Second Vice-President; Dinah Shelton, Rodrigo Escobar Gil, Rosa María Ortiz, and Rose-Marie Antoine, Commissioners.