

REPORT No. 44/12
DECISION TO ARCHIVE
PETITION 146-03
WILLIAMS NEFTALY VALENZUELA SARAVIA
EL SALVADOR
March 20, 2012

ALLEGED VICTIM: Williams Neftaly Valenzuela Saravia

PETITIONER: Williams Neftaly Valenzuela Saravia

ALLEGED VIOLATIONS: Articles 1, 8 and 25 of the American Convention on Human Rights and Articles 6 and 7 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights.

DATE PROCESSING BEGAN: November 13, 2003

I. POSITION OF THE PETITIONER

1. On February 27, 2003, the Inter-American Commission on Human Rights received a complaint lodged by Williams Neftaly Valenzuela Saravia, against El Salvador, on account of the alleged violation of due process and judicial guarantees.

2. The petitioner argued that he had been wrongfully dismissed. He reported that he had been carrying out his duties as Head of Human Resources at the National Hospital in Rosales, when he was transferred to the Ministry of Health and the Hospital in San Bartolo following an argument with the Director. On November 15, 2000, he had filed a complaint against that decision with the Public Prosecutor for the Defense of Human Rights (PDDH). That body had ordered the reinstatement of the petitioner to his previous position as Head of Human Resources in the National Hospital in Rosales. However, he had been reinstated in a different position and that position had been eliminated by the Legislative Assembly when it adopted the Law on Wages and the National Budget. On December 21, 2001, he had been told that his contract had been terminated with compensation.

3. The petitioner maintained that the PDDH ruled that assignment to a post that was abolished by the budget law was tantamount to a disciplinary measure and violated labor rights. He reported that he filed an action for amparo with the Supreme Court, which was declared inadmissible on the grounds that it was not incumbent on that Court to review the bases for the decision by the Legislative Assembly and because the action for amparo did not meet the requirement that it concern a matter of major constitutional importance.

II. POSITION OF THE STATE

4. The State of El Salvador argued that the rights cited by the petitioner had not been violated. It maintained that on numerous occasions the petitioner's attention had been brought to repeated acts of negligence in his work and that he had been accused of several instances of gross negligence in his work. It explained that the decision had been taken to transfer the petitioner, even though he could have been dismissed.

5. As for the budget law that eliminated the petitioner's last post, the State defended the legislature's power to shape the budget and emphasized that every elimination of posts cannot be construed as a violation of labor rights, but should rather be viewed as a responsible way for the State to act in a difficult economic environment. The State pointed out that the petitioner had been duly compensated and that he had accepted that compensation without raising any objection.

6. Finally, the State requested that the petition be declared inadmissible on the grounds

that domestic remedies had not been exhausted when it was lodged. It specified that the inadmissibility of the action for amparo brought by the petitioner did not establish a *res judicata* and did not exempt him from bringing pertinent actions before the competent courts.

III. PROCESSING BY THE IACHR

7. On February 27, 2003, the Inter-American Commission on Human Rights received the petition dated February 26, 2003 and assigned it the number 146-03. On November 13, 2003, it transmitted the pertinent parts thereof to the State, requesting that it provide any information it deemed appropriate within two months. The reply from the State of El Salvador was received on February 20, 2004.

8. The petitioner also submitted observations on April 19, 2004; January 12, 2005, and July 28, 2005; all of which were duly forwarded to the State. Observations by the State were received on July 20, 2004, February 10, 2005, and October 4, 2005. All of them were duly forwarded to the petitioner.

9. The State was asked to furnish updated information on April 1, 2010 and its reply was received on June 17, 2010. With a view to updating the processing of the petition and in order to inform the petitioner regarding the State's most recent observations, the IACHR asked the petitioner on July 22, 2010 to send any information he deemed relevant within one month. He was also told that if that information was not received within one month, the IACHR could archive the petition under Article 48.1.b of the American Convention on Human Rights and Article 42 of its Rules of Procedure. There was no reply from the petitioner.

IV. BASIS FOR THE DECISION TO ARCHIVE

10. Article 48.1 of the American Convention on Human Rights and Article 42 of the IACHR's Rules of Procedure establish that, before determining admissibility, the Commission shall ascertain whether the grounds for the petition still exist or subsist and if it believes they do not, it shall order the case to be closed. Likewise, Article 42.1.b of its Rules of Procedure establishes that the IACHR may decide to archive a case when the information necessary for the adoption of a decision is unavailable.

11. The last note from the petitioner in the instant case is dated July 28, 2005. Furthermore, the petitioner has not replied to the IACHR's request for further information made on July 22, 2010. In that last request, the petitioner was also apprised of the possibility that the file could be archived.

12. Consequently, the Commission lacks the wherewithal for determining whether the grounds that gave rise to the original complaint subsist and for making a final decision regarding the alleged violation of human rights. Pursuant to Article 48.1.b of the Convention and Article 42 of its Rules of Procedure, it therefore decides to archive this petition.

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 Antoinette, Commissioners.