

REPORT No. 97/12
DECISION TO ARCHIVE
CASE 823-07
ARGENTINA
November 8, 2012

ALLEGED VICTIM: Eduardo Emilio Sosa

PETITIONER: Centro de Estudios Legales y Sociales (CELS)

ALLEGED VIOLATIONS: Articles 1.1, 8 y 25 of the American Convention on Human Rights

DATE PROCESSING BEGAN: September 14, 2011

I. POSITION OF THE PETITIONERS

1. The petitioners state that Eduardo Emilio Sosa served as Prosecutor-General with the Higher Court of Justice of the Province of Santa Cruz until 1995. They allege that he was dismissed and removed from office without the proper procedure —impeachment for malfeasance— being followed, as required by the provincial Constitution, and that this violated the principles governing the removal of judges and government officials from office established in the local and national Constitution in order to safeguard the independence of the Judiciary.

2. The petitioners say that, in light of that situation, Mr. Sosa repeatedly filed suits with both the provincial and federal judiciary and, even though many of them were decided in his favor, he never succeeded in being reinstated in his position.

3. Indeed, the petitioners describe how in 1997 the Higher Court of Justice declared Law 2.404 unconstitutional, but failed to pronounce on reinstatement of the alleged victim to his former office. In 1998 and 2000, the Supreme Court of Justice of the nation dismissed the judgment of the provincial Higher Court and requested that the courts concerned hand down a decision in accordance with law. In 2001, the Federal Supreme Court ordered the province to “reinstate the plaintiff in the office of Prosecutor-General, with the functions he performed prior to the passing of Law No 2.404, within 30 days.” Despite that, the local judiciary ignored the Supreme Court order and decided to pay compensation instead.

4. In 2005, Mr. Sosa filed an appeal before the Federal Court because he considered that the compensation payment did not constitute an appropriate response. The ruling on that appeal came in 2005, when the court interpreted that payment of compensation was insufficient to safeguard the plaintiff’s constitutional guarantees and, given repeated noncompliance on the part of the local judicial authorities, ordered the Governor of the Province of Santa Cruz, as the natural representative of the Federal Government, to reinstate Mr. Sosa in the position of State Prosecutor with the Higher Court of Justice of Santa Cruz. The Supreme Court gave the Governor 30 days to put its decision into effect. Following further appeals filed by the provincial governor and the Prosecutor with the Higher Court, the Supreme Court ratified its order on November 10, 2009 and ordered that Mr. Sosa be reinstated in office within 30 days of this new order. When this order, too, was ignored, the Supreme Court of Justice of the Nation issued another ruling on September 14, 2010 in which, according to the petitioners, it reaffirmed the obligation of the Province of Santa Cruz to comply with its judgments and reinstate Mr. Sosa in the position of Prosecutor-General from which he had been removed in 1995.

5. The petitioners state that, in light of all those circumstances, in May 2011, after 16 years had elapsed since Mr. Sosa’s dismissal, without him ever having been reinstated in the position of State Prosecutor with the Higher Court of Justice of Santa Cruz, despite the numerous judicial bodies in which

his right to reinstatement had been expressly recognized, Mr. Sosa proceeded to request in the execution of judgment file being processed by the Supreme Court of Justice of the Nation that an end be declared to the process. Consequently, the petitioners state that for that reason they, too, desist from their case before the IACHR with respect to this claim.

II. POSITION OF THE STATE

6. The State requested that this petition be archived or, failing that, that it be declared inadmissible. It alleges that in this case it is not a matter of any alleged removal of an official from office, but rather a case of modifying the organizational structure of one of the branches of government, which involved terminating the position that the alleged victim had occupied.

7. The State adds that it ought also to be taken into consideration that, in May 2011, the alleged victim had requested, during processing of the execution of judgment matter by the Supreme Court of Justice of the Nation, that the case no longer be pursued given failure to achieve compliance with the Supreme Court's order to reinstate him. Moreover, the State points out that consideration should be given to the fact that the petitioner himself applied for retirement and his pension was granted on May 21, 2008 by the Social Security Department of the Province of Santa Cruz. In short, the State concludes that, since the alleged victim has himself ended the processing of his reinstatement in office, any pronouncement by the IACHR on that issue would be excessive and unnecessary, because the alleged victim went as far as he wanted locally. The State says that it should be recalled that international law is secondary to domestic law.

8. The State also points out that on numerous occasions the Province of Santa Cruz did offer the petitioner compensation and has met that commitment, given that in the judgment execution file the Higher Provincial Court established, on April 21, 2005, compensation for damages to Mr. Sosa, in lieu of reinstatement. Consequently, the State argues that the core of the complaint became abstract. That means, according to the State, that the Commission must proceed in accordance with Article 48.1.b of the American Convention, given that, in the instant case, the alleged grounds for the petition no longer subsist.

III. PROCESSING BY THE IACHR

9. The IACHR received the petition on June 25, 2007 and assigned it the number P-823-07. In a Note dated September 14, 2011, the IACHR forwarded the complaint to the State of Argentina, granting it two months to submit its reply, pursuant to Article 30 of the IACHR's Rules of Procedure. In a communication dated November 17, 2011, the State requested an extension of the deadline, which was granted by the Commission on November 22, 2011. The State presented its reply on January 13, 2012, which was duly forwarded to the petitioners.

10. In a communication dated April 23, 2012, the petitioners presented a written communication, desisting from the petition lodged with the IACHR.

IV. REASONS FOR THE DECISION TO ARCHIVE

11. Article 48.1.b of the American Convention on Human Rights establishes 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 or communication still exist. If they do not, the Commission shall order the record to be closed. For its part, Article 42.1.a of the Rules of Procedure of the IACHR likewise establishes that at any time during the proceedings, the Commission may decide to archive the file, whenever: a) the grounds for the petition for the petition or case do not exist or subsist. For its part, too, Article 41 of the Rules of Procedure of the IACHR regulates withdrawal, stating that "The petitioner may at any time desist from his or her petition or case, to which effect he or she shall so notify the Commission in writing. The statement by the petitioner shall be analyzed by the Commission, which may archive the petition or case if it deems it appropriate, or continue to process it in the interest of protecting a particular right."

12. In the instant case, and pursuant to the aforementioned regulatory framework, the IACHR notes that the petitioners, with the assent of the alleged victim, wrote asking to desist from processing the case before the IACHR. Under those circumstances, the IACHR decides to archive Case No. 823-07 in accordance with Article 48.1.b of the American Convention and Articles 41 and 42.1 of its Rules of Procedure.

Done and signed in the city of Washington, D.C., on the 8th day of the month of November, 2012.
(Signed): José de Jesús Orozco Henríquez, President; Felipe González, Second Vice-President; Dinah Shelton, Rodrigo Escobar Gil, Rosa Maria Ortiz and Rose-Marie Antoine, Commissioners.