

REPORT No. 10/13
PETITION 70-08
ADMISSIBILITY
PEDRO CÉSAR MARCANO
VENEZUELA
March 19, 2013

I. SUMMARY

1. On January 18, 2008 the Inter-American Commission on Human Rights (hereinafter “the Commission”, “the IACHR,” or “the Inter-American Commission”) received a petition filed by Mr. Pedro César Marciano Urriola (hereinafter “the petitioner”) alleging that the Bolivarian Republic of Venezuela (hereinafter also “the State”) was responsible for his suspension and subsequent removal from office as a judge in alleged reprisal for his rulings on an amparo motion in favor of an import company. The petitioner alleged that during the disciplinary proceedings, several rights protected by the American Convention had been violated. In particular, he claimed that he had been suspended without a prior hearing and without due process, and concerning his removal from office, that a procedural law extending the term for prescription of the disciplinary action had been retroactively applied, [a law that] on the date the disciplinary investigation commenced, should already have been prescribed according to the rules prevailing at the time he rendered his decisions.

2. The petitioner argued that the State is responsible for the violation of his rights to due process, non-retroactivity, compensation, honor and dignity, and redress that the Commission observes are protected in Articles 8, 9, 10, 11, 14, and 25, respectively, of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”), in relation to the general obligations of respect and guarantee established in Articles [sic] 1 of the treaty. As of the date of this report, the Commission has not received an answer from the State concerning Mr. Marciano’s petition.

3. Without prejudging the merits of the petition, on analyzing the positions of the parties and in keeping with the requirements stated in Articles 46 and 47 of the American Convention, the Commission decided to declare the petition admissible for the purpose of examining the alleged violation of the rights enshrined in Articles 8, 9, and 25 of the American Convention, all of them consistent with Articles 1 and 2 of the treaty. Notwithstanding, concerning the rights enshrined in Articles 10, 11, and 14 of the Convention, the IACHR deemed the petition inadmissible. The Commission furthermore decided to notify the parties of this decision and publish and include it in its Annual Report before the OAS General Assembly.

II. PROCESSING BY THE COMMISSION

4. The Inter-American Commission received the petition on January 18, 2008 and registered the petition as No. P-70-08. On January 24, 2008 it received complementary information from the petitioner. On April 30, 2008 the IACHR transmitted the pertinent parts of the petition to the State, giving it two months to furnish information, pursuant to Article 30(3) of the IACHR Rules of Procedure. On September 21, 2011 the IACHR reiterated its April 30, 2008 request for information to the State.

5. On October 24, 2011 the State requested retransmission of the information sent by the Commission in April 2008, which was provided to the State and dated October 26, 2011 along with a request for it to submit whatever comments it deemed relevant as soon as possible. As of the date of the approval of this report the IACHR has received no response from the State.

III. POSITION OF THE PARTIES

A. Position of the petitioner

6. The petitioner alleged that in 1999, in an unprecedented manner, several judges were fired in Venezuela without the required disciplinary proceeding to guarantee due process.

7. He indicated that on the date he was fired he was Judge of the Tenth Appellate Chamber of the Criminal Circuit Court of Metropolitan Caracas, where he had been transferred on July 1, 1999 after the First Superior Treasury Court, over which he had presided, was abolished.

8. He stated that in November 1999 he learned through a news item in a national daily that he had been suspended from his office as Superior Court Judge by order of the Office of the Inspector-General of Courts and appeared on a list of the Commission for the Operation and Restructuring of the Judicial System (CFRSJ). He noted that while the Constituent Assembly had issued a decree allowing judges to be suspended when the commission could prove they had committed serious errors or were involved in corruption, his suspension was related to neither and was ordered without a prior disciplinary hearing, violating the right to due process.

9. He alleged that once the disciplinary investigation had commenced, he was deposed that same November by an officer from the Inspector-General's Office and it was then that he learned that the suspension was related to his actions in an amparo motion when he was presiding over the Treasury Court.

10. In this regard, he explained that in 1998 he was in charge of ruling on an amparo motion that he decided in favor of a processed meat importer. He claimed that, based on that decision, in 1999 when what was then the Criminal Chamber of the Supreme Court learned in consultation about the amparo ruling, it reversed his rulings and forwarded them to the Office of the Inspector-General of Courts, which opened a disciplinary investigation in November 1999.

11. He stated that in March 2000, following the investigation of the Inspector-General's Office, the Commission for the Operation and Restructuring of the Judicial System (CFRSJ) dismissed him from his position as Superior Court Judge without due process. He argued that he contested this resolution by filing a motion to nullify the administrative decision with the Political-Administrative Chamber of the Supreme Tribunal of Justice, which ruled against him on July 19, 2006, more than 6 years later. He indicated that he subsequently contested that decision, filing a motion for review with the Constitutional Chamber, which ruled on July 20, 2007 that a review was unwarranted and ordered the Executive Office of the Judiciary to proceed, if he met the requirements, to retire him.

12. He maintained that in the Constitutional Chamber's ruling on his motion, one of the magistrates issued a dissenting vote, holding that a less favorable law had retroactively been applied to Mr. Marcano. According to him, to validate the delay in opening the disciplinary investigation, a law passed after the date the petitioner had rendered his decisions in the amparo proceeding had been applied, establishing a longer prescription period than the one that prevailed on the date he rendered his decisions; had that period been applied, the action would have been declared prescribed. He therefore argued that the Chamber had ruled without considering the doctrine of application of the most favorable law.

13. As to the admissibility requirements, the petitioner claims that by seeking remedies from the administrative jurisdiction (Office of the Inspector-General of Courts and the Commission for the Operation and Restructuring of the Judiciary) and later from the Supreme Tribunal of Justice (Political-Administrative and Constitutional Chambers) he had exhausted the domestic remedies offered by the State. As to the time limit for filing, he states that he learned of the Constitutional Chamber's ruling at the end of judicial vacations—that is, on September 15, 2007; his petition was therefore filed within the period stipulated in the Convention.

14. Finally, he claimed that his removal from office had caused him not only material damage, as he was deprived of a salary and benefits, but also moral damage in the eyes of his family and professional and teaching colleagues, owing to the action taken against him for alleged corruption. He therefore requested reinstatement in the position from which he had been removed, or absent that, the retirement benefits due him, as well as damages.

B. Position of the State

15. As previously indicated, on October 24, 2011 the State requested retransmission of the information sent by the Commission in April 2008, which was provided to the State and dated October 26, 2011, along with a request that it submit whatever comments it deemed relevant as soon as possible. Apart from the aforementioned communication, the Commission has received no other information or comment from the State with respect to this petition.

IV. ANALYSIS OF JURISDICTION AND ADMISSIBILITY

A. Jurisdiction

16. Article 44 of American Convention authorizes the petitioner in principle to file petitions with the Commission. The petition names as the alleged victim Mr. Pedro César Marcano, a natural person whom the Venezuelan State made a commitment to respect, guaranteeing the rights enshrined in the American Convention. Concerning the State, the Bolivarian Republic of Venezuela has been a State party to the American Convention since September 8, 1977, the date it deposited its ratification instrument.¹ The Commission therefore has jurisdiction *ratione personae* and *ratione temporis* to examine the petition.

17. Likewise, the IACHR has jurisdiction *ratione loci* and *ratione materiae* to review the petition, since it alleges violations of human rights established in the American Convention, and since the alleged events were perpetrated in the territory of the Bolivarian Republic of Venezuela, a State party to the treaty.

B. Exhaustion of domestic remedies

18. Article 46(1)(a) of the American Convention requires prior exhaustion of the remedies available in the domestic jurisdiction under the generally accepted principles of international law as a requisite for the admission of complaints about the alleged violation of the American Convention.

19. In this case, the Commission observed that the alleged victim had availed himself of various administrative and judicial remedies available in the State to contest his suspension and subsequent firing; the State therefore had had the opportunity to hear his grievances and, as applicable, protect the rights that he alleged had been violated.

20. Therefore, regarding his suspension, according to public information, the petitioner filed a motion with the Plenary Chamber of the Supreme Tribunal of Justice to reverse the administrative action that imposed his suspension. On May 2, 2000 the court deferred jurisdiction to the Political-Administrative Chamber, which ruled on July 4, 2000, declaring the motion inadmissible.² As understood from the text of the resolution, Mr. Marcano alleged that his rights to be notified and heard, to due process, to a defense, and to the presumption of innocence had been violated. He also alleged that "illegality due to groundless actions and a complete and absolute disregard for legally established procedure" had been committed.³ The Political-Administrative Chamber had found that, by having the precautionary measure, the nature of a procedural act in a disciplinary proceeding that had not been concluded by the administrative authority excluded "the possibility of contesting it before this

¹ On September 10, 2012 the Bolivarian Republic of Venezuela notified the Secretary General of the OAS of its decision to withdraw from the American Convention. This withdrawal will become effective one year after the date of its notification, pursuant to Article 78.1 of the American Convention and does not affect jurisdiction to hear [complaints] under the American Convention about events prior to the withdrawal's entry into force.

² Supreme Tribunal of Justice, File. 0555, Judgment. 01570, July 4, 2000. Available at: <http://www.tsj.gov.ve/decisiones/spa/Julio/01570-040700-0555.htm>

³ Supreme Tribunal of Justice, File. 0555, Judgment. 01570, July 4, 2000. Available at: <http://www.tsj.gov.ve/decisiones/spa/Julio/01570-040700-0555.htm>

jurisdictional organ.”⁴ The Commission also notes, in the information provided by the petitioner, that in his communication of February 16, 2000 he requested the Inspector-General of Courts to rescind his suspension.

21. Following the March 3, 2000 CFRSJ resolution dismissing him, Mr. Marcano filed a motion for reversal with the Political-Administrative Chamber of the Supreme Tribunal of Justice, alleging, *inter alia*, retroactive application of the less favorable law. A ruling on this motion was handed down on July 20, 2006, upholding the CFRSJ's actions. Responding to the allegation of retroactive application, the Political-Administrative Chamber stated in its ruling that this did not apply, since on the date that the law setting a three-year period of prescription went into force, the period for disciplinary action under the rules in effect at the time of the events had not been prescribed.

22. Finally on April 11, 2007 Mr. Pedro Marcano filed a motion for a constitutional review with the Constitutional Chamber of the Supreme Tribunal of Justice, which ruled on July 20, 2007, denying the constitutional review on the grounds that there had been no transgression of the content of the constitutional provision and ordering the Executive Office of the Judiciary to proceed with his retirement. In that resolution, the vote of one of the magistrates indicated that the procedural law modifying the period for the prescription of disciplinary action had been retroactively applied.

23. In light of this, and given the lack of contradictory information from the State, the Commission deems for admissibility purposes that the petitioner had made use of the remedies available in the State in relation to his claims regarding his suspension and subsequent firing; various State entities had therefore had the opportunity to protect the rights that he alleged were violated. In light of this and the State's lack of response, the Commission deems reasonable the petitioner's allegation that he had exhausted the domestic remedies in the State and finds the requirement in Article 46(1)(a) of the Convention to have been met.

C. Time limit for filing the petition

24. Article 46.1.b of the American Convention establishes that for a petition to be considered admissible by the Commission, it must be lodged within a period of six months from the date on which the alleged victim was notified of the final judgment at the national level. Thus, the Inter-American Commission must determine whether the petition in question was filed within six months. In the case in question, the IACHR observes that the decision of the Constitutional Chamber of the Supreme Tribunal of Justice is dated July 20, 2007, subsequently notified, and the petition was filed on January 18, 2008; hence, the Commission deems that it was filed within the period stipulated in the Convention.

D. Duplication of proceedings and international *res judicata*

25. The file does not indicate that the matter in the petition is pending another international proceeding, or that it duplicates a petition already examined by this or any other international organ. Hence, the requirements of Articles 46(1)(c) and 47(d) of the Convention are deemed to have been met.

⁴ Supreme Tribunal of Justice, File. 0555, Judgment. 01570, July 4, 2000. Available at: <http://www.tsj.gov.ve/decisiones/spa/Julio/01570-040700-0555.htm>

E. Characterization of the alleged facts

26. For purposes of admissibility, the Commission must decide whether the facts alleged can be characterized as a violation of rights as stipulated in Article 47(b) of the American Convention, or whether the petition is “manifestly groundless” or “obviously out of order,” according to section (c) of that article. The criterion for evaluating these requirements differs from the one used to rule on the merits of a petition; the Commission must conduct a *prima facie* evaluation to ascertain whether the petition establishes grounds for the possible or potential violation of a right guaranteed by the Convention, but not to establish the existence of a violation of rights. This determination constitutes a preliminary analysis that does not imply prejudgment of the merits of the case.⁵

27. In the case in question, the Commission observes that the petitioner had the opportunity to present his allegations to various State entities about the reasons behind the opening of the disciplinary proceeding, these allegations having been ruled on at the highest level by the Supreme Tribunal of Justice. The Commission reiterates that it is not called to act as a court of appeals to examine alleged errors of law or of fact that may have been committed by domestic courts acting in their jurisdictional sphere.⁶ However, in terms of its mandate to enforce observance of the rights protected in the Convention, the Commission necessarily has jurisdiction to declare a petition admissible or rule on its merits when it is alleged that a domestic judicial decision has been rendered that disregards the right to judicial guarantees or when other rights protected by the Convention have been violated.⁷

28. The IACHR deems that Mr. Marcano’s claims regarding the order to suspend him while he was the subject of a disciplinary investigation, as well as the alleged application of the less favorable law to Mr. Marcano, used by the courts to validate the disciplinary investigation and his subsequent firing,⁸ and the alleged lack of protection by the domestic courts could represent violations of Articles 8, 9, and 25 of the American Convention in relation to Article 1 of the treaty. The Commission therefore decides to declare these articles admissible for the purpose of analyzing their potential violation in the merits stage of the matter in question.

29. At the same time, the IACHR reiterates that neither the American Convention nor the Commission’s Rules of Procedure require the petitioner to name the specific rights allegedly violated by the State in the matter put before the IACHR, although petitioners may do so. Based on the jurisprudence of the system, the Commission is responsible for determining in its admissibility reports which provision of the relevant Inter-American instruments is applicable and whose violation could be established if the alleged facts are proven with sufficient evidence. In this case, considering the importance of the stability of judges to ensuring the independence of the Judiciary in a democratic society,⁹ the Commission deems it appropriate to analyze in the merits stage whether the applicable legal provisions that make it possible to impose a precautionary measure to suspend a judge subject to a disciplinary proceeding without a prior hearing raises questions about the extent of the State’s obligation contained in Article 2 of the American Convention in relation to Article 8 of the treaty.

⁵ IACHR, Report No. 12/10, Case 12.106, Admissibility, Enrique Hermann Pfister Frías and Lucrecia Pfister Frías, Argentina, March 16, 2010, para. 46; IACHR, Report No. 10/10, Petition No. 214-08, Admissibility, Koempai et al., Suriname, March 16, 2010, para. 43.

⁶See IACHR, Report N° 1/03, Case N° 12.221, Jorge Omar Gutiérrez, Argentina, February 20, 2003, paragraph 46 citing IACHR, Report N° 39/96, Case N° 11.673, Marzióni, Argentina, October 15, 1996, paragraphs 50-51.

⁷See IACHR, Report N° 1/03, Case N° 12.221, Jorge Omar Gutiérrez, Argentina, February 20, 2003, paragraph 46 citing IACHR, Report N° 39/96, Case N° 11.673, Marzióni, Argentina, October 15, 1996, paragraphs 50-51.

⁸ According to the information provided by the petitioner, the 3-year prescription period for disciplinary action that was applied to validate the disciplinary investigation was established by a law passed subsequent to the date that Mr. Marcano rendered his decisions (May and June 1998). According to the criterion of the Supreme Court prevailing on the date the events occurred, in the absence of special regulations for the prescription of disciplinary action against judges, the regulatory vacuum was filled by the regulations governing criminal law, in which a period of 1 year was indicated for the prescription; therefore, according to the petitioner in the motions filed for remedies, on the date that the disciplinary investigation was opened (November 1999), the action should have been declared prescribed. See Supreme Tribunal of Justice, Constitutional Chamber, File 07-0498, July 20, 2007.

⁹IACtHR, Constitutional Court Case. Judgment of January 31, 2001. Series C No. 71.

30. Finally, the Commission deems that the petitioner did not present allegations that represent a violation of the respective rights to compensation, honor and dignity, and reply enshrined in Articles 10, 11, and 14 of the American Convention.

V. CONCLUSIONS

31. Based on the aforementioned arguments of fact and of law and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare admissible this petition with respect to the alleged violations of the rights of Mr. Pedro César Marcano Urriola protected in Articles 8, 9, and 25 of the American Convention on Human Rights in relation to the general obligations enshrined in Article [sic] 1 and 2 of the treaty.

2. To declare this case inadmissible with respect to the alleged violations of the rights protected in Articles 10, 11, and 14 of the Convention.

3. To notify the Venezuelan State and the petitioners of this decision.

4. To proceed to the analysis of the merits of the case.

5. To publish this decision and include it in its Annual Report before the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 19th day of March 2013. (Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Rosa María Ortiz, Second Vice-President; Felipe González, Dinah Shelton, Rodrigo Escobar Gil, Commissioners.