

**REPORT No. 76/13**  
DECISION TO ARCHIVE  
PETITION 12.194  
VENEZUELA  
July 16, 2013

**ALLEGED VICTIM:** Euclides Rafael Moreno Moreán

**PETITIONER:** Douglas Cassel

**VIOLATIONS DEEMED**

**ADMISSIBLE:** Articles 1(1), 8 and 25 of the American Convention on Human Rights

**INITIATION OF PROCESSING:** May 29, 1999

**I. POSITION OF THE PETITIONERS**

1. On May 29, 1999, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the IACHR") received a petition submitted by Douglas Cassel (hereinafter "the petitioner") on behalf of Euclides Rafael Moreno Moreán (hereinafter "the alleged victim") claiming that in the prosecution and trial of the alleged victim for presumed embezzlement of public funds, the Bolivarian Republic of Venezuela (hereinafter "the State" or "the Venezuelan State") was responsible for violations of the alleged victim's right to personal liberty, his due process protections, his right to private property and his right to judicial protection, all in relation to the State's obligations to take measures and guarantee compliance with the American Convention on Human Rights (hereinafter "the American Convention").

2. The petitioner noted that the alleged victim had served as President of the *Instituto Venezolano de los Seguros Sociales* (Venezuelan Social Security Institute) from 1989 to 1992. According to the petition, in 1992 a secret investigation was launched, the alleged victim was accused of the crime of willful embezzlement (*peculado doloso*) for irregularities in the handling of two checks; the alleged victim's arrest was ordered and he was denied the possibility of release on bond pending the outcome of the secret inquiry and trial. The petitioner argued that the alleged victim had decided to leave the country to avoid being unjustly detained.

3. The petitioner maintained that on August 13, 1997, after five years of proceedings, the Superior Court for Safeguarding Public Property acquitted Mr. Moreno, *in absentia*, of the crime of willful embezzlement (*peculado doloso impropio*). The Public Prosecutor's Office appealed the decision, but the Supreme Court's Chamber of Cassation for Criminal Matters upheld the verdict of acquittal on December 2, 1998. The acquittal notwithstanding, the petitioner noted that the Supreme Court's Chamber of Cassation for Criminal Matters ordered the alleged victim to serve a seven-and-a-half month prison sentence, and to pay monetary compensation for the crime of negligent embezzlement (*peculado culposo*).

4. The petitioner's contention was that the alleged victim's right to due process and right of defense had been violated and he was prevented from having access to and participating in the different aspects of the investigative phase. The petitioner claimed that the alleged victim was unable to know or refute the evidence introduced against him, was unable to introduce evidence on rebuttal, and was unable to exercise his right to the assistance of counsel or legal aid.

5. The petitioner maintained that although the State subsequently amended its Code of Criminal Procedure, at the time of the alleged victim's conviction the State violated his right to due process by establishing a secret investigative phase and by denying him release on bond because his case was one related to safeguarding public property.

6. The petitioner also made reference to the prosecution of a second case against the alleged victim, in which the Superior Court for Safeguarding Public Property had reportedly handed down a conviction "behind closed doors", two days before the new code of criminal procedure entered into force. Neither the alleged victim nor his attorneys were advised of the deadline for filing an appeal, which meant that he was denied any real possibility of appealing his conviction. In this second verdict, the alleged victim had reportedly been sentenced to two years eleven months in prison, and was ordered to pay monetary compensation.

## **II. POSITION OF THE STATE**

7. The State maintained that throughout the criminal inquiry, both in the Superior Court for Safeguarding Public Property and in the Chamber of Criminal Cassation of the Supreme Court of Justice, the procedure established by Venezuelan law was fully observed. It added that the defense attorneys for the alleged victim were able to exercise all the means of defense they saw fit to pursue for their client. It argued further that the alleged victim had enjoyed all the procedural guarantees, even *in absentia*. The State maintained that in keeping with the Organic Law for Safeguarding Public Property, a provisional defender had been appointed; subsequently, two definitive defense attorneys were appointed who, on the alleged victim's behalf and in his representation, had defended his case by presenting the evidence they deemed relevant.

8. The State argued that the petitioner had turned to the Commission in order to use the inter-American system as a court of fourth instance, even though his petition did not fit any of the criteria that the Commission has established as grounds for allowing an exception to rule that "fourth instance" claims are beyond the scope of the Commission's competence. The State requested that the petition be declared inadmissible as it was manifestly unfounded and obviously out of order, and was entirely a function of the fact that the alleged victim objected to the judgment of the Venezuelan courts.

9. It further noted that a decree issued on August 26, 2004, declared that the penalty imposed on the alleged victim was time barred, under the Criminal Code and the Organic Code of Criminal Procedure of the State. Finally, the State argued that due process guarantees were observed in coming to that decision in the alleged victim's favor; it therefore asked the IACHR to declare the petition inadmissible.

### **III. PROCESSING WITH THE IACHR**

10. In its Admissibility Report No. 48/05, dated October 12, 2005, the IACHR declared the allegations of violations of articles 1(1), 8 and 25 of the American Convention to be admissible. The parties were notified of the report on November 3, 2005. On that same day, the IACHR asked the parties to present any additional observations they might have on the merits within two months' time. The IACHR also made itself available to the parties with a view to reaching a friendly settlement, in accordance with Article 38(1) of the Commission's Rules of Procedure and Article 48(1)(f) of the American Convention.

11. On January 17, 2006, the petitioner asked the IACHR to seek a prompt solution to the case through either a friendly settlement or resolution. This communication was forwarded to the State on March 10, 2006, which was asked to send any observations it might wish to make. On March 30, 2006, the Commission received a communication from the petitioner, which was conveyed to the State on April 17, 2006.

12. On May 16, 2006, the State submitted a brief indicating that the alleged victim and the State had jointly decided to begin the friendly settlement process. On June 19, 2006, the IACHR requested information from the parties concerning the progress made in the friendly settlement process. On August 23, 2006, the petitioner again asked the IACHR for a swift resolution of the case; that information was forwarded to the State on November 6, 2006, which was given two months to present its observations.

13. On April 29, 2009, the IACHR asked the parties to send, within one month, information on the progress made in the friendly settlement process.

14. Because no further observations on the merits or any type of information was received from the petitioner, on April 11, 2012 the Commission repeated the request it had made of him and indicated that if the information was not received within one month, the Commission could decide to close the record on the matter. Thus far, the Commission has not received any reply.

### **IV. GROUNDS FOR THE DECISION TO CLOSE THE RECORD**

15. Article 48(1)(b) of the American Convention provides that when a petition is in process and once the information has been received, or 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 and, if they do not, shall order the record to be closed. Article 42(1)(b) of the Commission's Rules of Procedure states that at any time during the proceedings, the Commission may decide to archive the file whenever the information necessary for the adoption of a decision is unavailable.

16. More than six years have passed since the latest communication from the petitioner, and the additional observations on the merits or any other information from the petitioner has yet to be received. The IACHR also observes that the information in the case file that served as the basis for the adoption of the admissibility report is not sufficient for the IACHR to decide the merits of the case. Therefore, and in accordance with Article 42(1)(b) of its Rules of Procedure, the IACHR decides to close the record on the matter.

Done and signed in the city of Washington, D.C., on the 16 day of July 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, Rose-Marie Antoine, Commissioners.