

**REPORT No. 117/13**  
PETITION 12.135  
DECISION TO ARCHIVE  
ARGENTINA  
November 5, 2013

**ALLEGED VICTIMS:** Carlos Ángel Pavichich<sup>1</sup> and Olinda Montenegro

**PETITIONERS:** Eduardo A. Moro, Angel Rozas, Carlos Angel Pavichich, Olinda Montenegro, María Teresa Flores, Leandro O. Despouy, and Ricardo R. Gil Lavedra

**ALLEGED VIOLATIONS:** Right to a fair trial, right to participate in government, and right to equal protection and effective recourse, as they relate to a State's duty to respect rights without any discrimination. (Articles 8, 23, 24, and 25, as they relate to Article 1(1) of the American Convention on Human Rights)

**DATE OF INITIAL PROCESSING:** January 29, 1999

**I. POSITION OF THE PARTIES**

**A. Position of the Petitioners**

1. On January 25, 1999, the Inter-American Commission on Human Rights (hereinafter, "the Commission" or the "IACHR") received a petition filed by Eduardo A. Moro, Ángel Rozas, Carlos Ángel Pavichich, and Olinda Montenegro, in which they alleged that the Argentine State had violated the rights of Mr. Pavichich and Ms. Montenegro inasmuch as, despite the fact that they had met the requirements for holding office as senators for the Province of El Chaco, in representation of the *Alianza Frente de Todos*, the national Senate issued Resolution No. 1083/98 whereby it dismissed their claims and instated Hugo Abel Sager and Lidia Beatriz Ayala from the *Justicialista* party in those positions. By means of that Resolution, the Senate resolved the challenge to the appointment of the senators filed by the *Justicialista* party, stating that they were the political party with the largest number of members in the legislature at the time of the election. The petition further asserts that the State violated the rights to a fair trial and to effective recourse as a result of the decisions rendered by the Supreme Court of Justice (hereinafter, the "CSJN") and the National Electoral Chamber.

2. The petitioners explained that by virtue of Article 54 of the Argentine Constitution of 1994, each province is represented by three senators who sit in the national Senate. Pursuant to the temporary system that governed the 1995 and 1998 elections, provinces had the exclusive power, via their legislatures, to elect their representatives to the Senate under an indirect system until 2001, at which point senators were to be elected by direct vote of the citizens of each province. Since the parties

that made up the *Alianza Frente de Todos* had won the provincial elections in 1997, the Senate decision resolving the challenge to their appointment to office would have been arbitrary.

3. On November 12, 1998, the Governor of the Province of El Chaco asked the CSJN to declare the Senate's resolution unconstitutional and admit a request for a prohibitory injunction to prevent the swearing in of the senators who had allegedly been unduly appointed. On November 24, 1998, the CSJN rejected the request for a prohibitory injunction as well as the complaint because it considered that they involved a political matter not subject to jurisdiction. The following day the senators appointed by the Senate were sworn in and instated in their posts.

4. The petitioners held that the ruling by the CSJN ratified the actions taken by the Senate, thereby denying the senators elected by El Chaco the possibility of having their case examined in detail by the courts.

#### **B. Position of the State**

5. The State recognized that domestic remedies had effectively been exhausted by the judgment of the Supreme Court of Justice of November 24, 1998, that the deadline provided for under Article 46(1)(b) of the American Convention had been met, and that the matter was not pending in another international proceeding for settlement.

6. The State requested, on the basis of Articles 47(b) and 47(c), that the petitioners' complaint be declared inadmissible because it did not state facts that established a violation of the Convention and advised that, should the Commission take a position on the matter, it would be acting as a fourth instance.

7. The State noted that both the *Alianza Frente de Todos* and the *Justicialista* party claimed to hold the majority in the legislature. The Senate decided that the senate seat for the 1998-2001 term in representation of the Province of El Chaco corresponded to the *Justicialista* party on the grounds that it was the party with the highest number of seats in the provincial legislature at the time of the senate election and that the *Alianza Frente de Todos* did not have the right to have its candidate appointed.

8. The State affirmed that the Senate, in making its decision, abided by what is stated in the text of the Argentine Constitution, which refers to "electoral alliances" and not to "parliamentary alliances." It also noted that it based its decision on Law 24.444, which imposed the criterion of "origin of the mandate or of the seat" for purposes of determining how many seats corresponded to each party or electoral alliance.

#### **II. PROCESSING BEFORE THE COMMISSION**

9. The petition was received on January 25, 1999. The petitioners requested a hearing before the IACHR, which was held on March 4, 1999 during the 102<sup>nd</sup> regular session. On April 19, 1999, the IACHR forwarded the relevant portions of the petition to the Argentine State. On October 15, 1999, the IACHR received the State's observations and on October 26, 1999, such observations were forwarded to the petitioners. The petitioners' comments were received on November 12, 1999.

Articles 46 and 47 of the American Convention on Human Rights with respect to alleged violations of Articles 1, 8, 23, 24, and 25 of the same Convention. The State was notified of such decision on December 14, 1999. On December 17, 1999, additional information furnished by the petitioners was forwarded to the State.

11. The IACHR received communications from the State on April 26, 1999, April 28, 1999, July 21, 1999, February 14, 2000, April 11, 2000, May 23, 2000, August 8, 2000, December 20, 2000, January 9, 2001, January 16, 2001, and April 23, 2001, all of which were forwarded to the petitioners. The Commission likewise received communications from the petitioners on April 19, 1999, December 21, 1999, January 19, 2000, June 1, 2000, July 19, 2000, September 5, 2000, October 11, 2000, November 29, 2000, December 26, 2000, February 22, 2001, May 21, 2001, and June 28, 2001, all of which were forwarded to the State.

12. On December 10, 2010, the IACHR sent a letter to the petitioners requesting updated information about the matter. When no answer was received, the request was repeated on July 6, 2011. On January 31, 2013, the IACHR once again sent a request for information to the petitioners, indicating that if such information was not received in the space of one month, the IACHR could archive the case file; no response was received.

### **III. BASIS FOR THE DECISION TO ARCHIVE**

13. Both Article 48(b) of the American Convention on Human Rights and Article 42 of the Commission's Rules of Procedure provide that, during the processing of a petition, after receiving information, or once the period established to receive information has elapsed, the IACHR shall ascertain whether the grounds for the petition or communication in the case still exist and if they do not exist or subsist, it shall order the archiving of the case file.

14. The Commission observes that the last action taken by the petitioners that is included in the case file dates back to June 28, 2001, and that, to date, the petitioners have not responded to the requests for information made by the IACHR on December 10, 2010, July 6, 2011, and January 13, 2013. Having conducted the corresponding evaluation, the Commission believes that it lacks the information necessary to reach a decision on the case and that the petitioners' failure to take action in the process constitutes an indication of disinterest in moving forward with the process. Thus, in accordance with Article 48(b) of the Convention as well as Article 42 of its Rules of Procedure, the IACHR hereby decides to archive this case.

Done and signed in the city of Washington, D.C., on the 5th day of November 2013. (Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Dinah Shelton, Felipe Gonzalez, Rodrigo Escobar Gil and Rose-Marie Belle Antoine, Commissioners.