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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 99/06; Petition 180-01
Session:	Hundred Twenty-Sixth Regular Session (16 – 27 October 2006)
Title/Style of Cause:	Diego Rafael Jorreto Bonilla v. Chile
Doc. Type:	Decision
Decided by:	President: Evelio Fernandez Arevalos; First Vice-President: Paulo Sergio Pinheiro; Second Vice-President: Florentin Melendez; Commissioners: Freddy Gutierrez, Paolo Carozza, Victor Abramovich.
Dated:	21 October 2006
Citation:	Jorreto Bonilla v. Chile, Petition 180-01, Inter-Am. C.H.R., Report No. 99/06, OEA/Ser.L/V/II.127, doc. 4 rev. 1 (2006)
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I. SUMMARY

1. On March 20, 2001, Rafael Jorreto Veiga (hereinafter "the petitioner") submitted a petition to the Inter-American Commission on Human Rights ("the IACHR" or "the Inter-American Commission"), against the Republic of Chile ("the Chilean State" or "the State") for the alleged violation of the rights of the child (Article 19), provided for in the American Convention on Human Rights ("the American Convention"), to the detriment of his minor son Diego Rafael Jorreto Bonilla, said to have occurred due to the alleged irregularities in the judicial proceeding that granted definitive guardianship to the minor's mother; and because he has been unable to see his son since December 21, 1998, since his lawsuit regarding his visitation regime as the father was dismissed.

2. The petitioner argues that the mother attained custody of the minor child (Case No. 2709-97 Third Court of Minors), and dismissal of the lawsuit regarding visitation (Case No. 2030-99 Fourth Court of Minors) "extra-legally, by maneuvers and influence-peddling in the courts," due to biased reports by the Forensic Medicine Institute (Instituto Médico Legal) prepared "as part of an action managed and coordinated to make me appear abnormal, which would be useful for them to discredit everything that I might allege."

3. With respect to admissibility, the State argued that the petition should be found inadmissible pursuant to Article 46.a, b, and c of the American Convention, since the petitioner failed to exhaust the remedies the domestic jurisdiction afforded him for reviewing his claim seeking regulation of the visitation regime. It also alleged that based on the fourth-instance test, the petition should be considered "manifestly groundless and out of order." With regards to the guardianship and the visitation regime, the State indicated that none of the judges who issued

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rulings in those cases violated rights of the child, and that to the contrary their actions were guided precisely by the paramount interest of the child.

4. After analyzing the parties' positions, the IACHR concludes in this report that the case is inadmissible, in light of Articles 46 and 47 of the American Convention. Accordingly, the Commission notifies the parties of this report and decides to publish it and include it in its Annual Report.

II. PROCESSING BEFORE THE COMMISSION

5. The Inter-American Commission received the complaint on March 20, 2001, and assigned it number 180-01. After an initial review, in keeping with Article 26(2) of the Rules of Procedure, the Executive Secretariat requested additional information from the petitioner. On June 25, 2003, the IACHR forwarded its pertinent parts to the Chilean State, asking that it submit any observations. On September 17, 2003, the State sought an extension, which was granted that same day by the IACHR.

6. On December 12, 2003, the State submitted its observations, and on the same date the petitioner's observations were forwarded to the State, which was given one month to answer. On September 5, 2004, the State's observations were forwarded to the petitioner, who was given one month to submit his arguments. On October 12, 2004, an extension requested by the petitioner was granted. Once the petitioner's communication was received, it was forwarded to the State on December 1, 2004, which once again was given one month to respond.

7. On February 3, 2005, the State sent in its observations, which were forwarded that same day to the petitioner, who was given one month to answer. On September 12 and 13, 2005, the petitioner provided additional information, whose pertinent parts were sent to the State on October 6, 2005. On November 4, 2005, the petitioner provided additional information, whose pertinent parts were forwarded to the State on December 7, 2005. Also on November 4, 2005, the State forwarded additional information, whose pertinent parts were forwarded to the petition on December 2, 2005.

8. On November 8, 2005, additional information provided by the petitioner was passed on to the State. On April 12, 2006, and August 9, 2006, the petitioner again provided additional information.

III. POSITIONS OF THE PARTIES

A. The petitioner

9. The petitioner indicates that on December 21, 1998, the judgment was issued that gave definitive guardianship of the minor Jorreto Bonilla to the mother, but that it failed to regulate the visitation regime for the father. The judgment was appealed by the petitioner, and on August 12, 1999, it was affirmed on appeal. On August 18, 1999, Mr. Jorreto Veiga filed a complaint appeal (recurso de queja) before the Supreme Court, which was declared inadmissible. On September 3, 1999, he filed a motion for reconsideration (recurso de reposición) before the

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Supreme Court, to amend the ruling that denied the recurso de queja. No additional information was received about the processing of that motion.

10. The petitioner questions the granting of definitive guardianship to the mother because he alleges that grave psychopathies were certified in the proceeding on family violence; that expert reports and determinations of liability for physical and psychological abuse were hidden; and due to the fact that the judges apparently relied on a report from the Forensic Medicine Institute (Instituto Médico Legal) that the petitioner describes as false and fraudulent.

11. As regards the visitation regime, the petitioner indicates that he ended up having no attorney to represent him because it was impossible for him to secure a lawyer who would withstand the "influence-peddling." On this basis, he asked the Fourth Court of Minors to authorize him to personally monitor the proceeding, which, according to his argument, was never answered. The petitioner adds that he has been looking into the status of the matter personally and through third persons on different occasions. He notes that on trying to find out in December 2002, the clerks of court answered that the proceeding had not gone anywhere, that it had been archived for more than a year, and that there was no resolution whatsoever regarding visitation. Finally, the petitioner notes that he was never notified of the judgment of June 7, 2002, which rejected his request for a visitation regime in the proceeding identified as Case 2039/99.

12. In view of these considerations, the petitioner asked that "his complaint be taken into account" because of "the chaotic performance of the Chilean courts."

B. The State

13. The State asked that the petition be declared inadmissible, because the petitioner did not comply with Article 46.1.a of the American Convention, on failing to appeal the judgment of June 7, 2002, which rejected his action seeking establishment of the visitation regime.

14. As regards the guardianship proceeding (Case 2709-97) before the Third Court of Minors, the State indicates that definitive guardianship was awarded to the mother. The court relied on a report from the Forensic Medicine Institute (Instituto Médico Legal), which established that the mother is in a position to exercise her rights as such.

15. The State indicates that the action on the visitation regime was rejected based on psychological reports and reports from the social service that recognize that the child perceives the father as "a threatening figure for his stability, and that he did not wish to have visits with him." In addition, it notes that a motion of appeal could have been brought against that judgment, but that the petitioner failed to do so.

16. The State concludes that the domestic courts, in ruling on the petitions filed by Mr. Jorreto Veiga, abided strictly by the standards of due process, and in timely fashion. Accordingly, it considers that the Inter-American Commission is not competent to review the decisions of the Chilean courts, adopted after a legal proceeding that was processed reasonably.

IV. ANALYSIS OF ADMISSIBILITY

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A. Competence of the Commission ratione personae, ratione materiae, ratione temporis, and ratione loci

17. The petitioner is authorized by Article 44 of the American Convention to file complaints before the IACHR. The complaint notes as the alleged victim an individual with respect to whom the Chilean State undertook to respect and ensure the rights enshrined in the American Convention. As regards the State, the Commission observes that Chile is a state party to that international instrument, which it ratified on August 21, 1990. Therefore, the IACHR is competent ratione personae to examine the petition.

18. In addition, the Commission is competent ratione materiae because the petitioner alleges a violation of a right protected by the American Convention which, if proven, could constitute a violation of its Article 19. Specifically, the petitioner alleges that due to the "irregularities" in the judicial proceedings described, the child Jorreto Bonilla has been unable to see his father since December 21, 1998, thereby triggering the international responsibility of the State.

19. The IACHR is competent ratione temporis, insofar as the obligation to respect and ensure the rights protected in the American Convention was already in force for the State by the date that the facts alleged in the petition are said to have occurred.

20. The Commission is competent ratione loci, for petitioner alleges that a violation of human rights occurred in the territory of a state party to the American Convention.

B. Exhaustion of domestic remedies and the six-month period

21. According to Article 46 of the American Convention, the admissibility of a case is subject to the condition "that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law." This requirement guarantees the state the opportunity to resolve human rights claims within its own legal framework before having to face a proceeding before the inter-American system.

22. The claim submitted by the petitioner to the inter-American system refers to the proceeding regarding guardianship of his son, Diego Jorreto Bonilla, Case 2709-97, which resulted in a decision on appeal unfavorable to his claim, handed down August 12, 1999. That final decision exhausted domestic remedies. The petition was received March 21, 2001, 19 months after that final decision, thus the petition falls clearly outside of the time period established by Article 46.1.b of the American Convention.

23. The Inter-American Commission further observes that the petitioner also questions the judicial proceedings regarding the visitation regime in the proceeding identified as Case No. 2030-99. Although this proceeding was initiated after the firm decision in the guardianship matter, it is clearly accessory to the principal decision on the matter, in which there was a final judgment on August 12, 1999. The initiatives taken by Mr. Jorreto Veiga in that trial could not result in the re-establishment of the legal situation that he alleges was infringed by the judicial

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determination as to custody of his son. Therefore, proceeding No. 2030-99 cannot push back the beginning of the Convention's term of six months, provided for at Article 46.1.b.[FN1]

[FN1] See IACHR, Report No. 32/98, Case 11.507 Anselmo Ríos Aguilar, Mexico, May 5, 1998, para. 32.

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24. Accordingly, the Commission concludes that the petitioner did not timely file his claim with the IACHR, as required by the American Convention, so it must find it inadmissible.

V. CONCLUSIONS

25. Based on the arguments of fact and law set forth above

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To find the instant petition inadmissible.
2. To notify the parties of this decision.
3. To publish the decision and include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in Washington, D.C., on the 21st day of the month of October, 2006. (Signed): Evelio Fernández Arévalos, President, Paulo Sérgio Pinheiro, First Vice-president; Florentín Meléndez, Second Vice-president, Freddy Gutiérrez, Paolo Carozza and Víctor Abramovich, Commissioners.