

REPORT N° 25/06¹
PETITION 12.311
ADMISSIBILITY
EDUARDO BENJAMÍN COLINDRES
EL SALVADOR
March 14, 2006

I. SUMMARY

1. On May 4, 2000, the Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission," the "Commission" or the "IACHR") received a petition from the Human Rights Institute of the "José Simeón Cañas" Central American University, IDHUCA (hereinafter "the petitioners") alleging the international responsibility of El Salvador ("the State") for violation of the human rights of Mr. Eduardo Benjamín Colindres (hereinafter "the alleged victim") in connection with his dismissal, by the Legislative Assembly, from the office of magistrate of the Supreme Electoral Tribunal. The petitioners allege that the events complained of constitute a violation of several rights protected by the American Convention on Human Rights ("the American Convention"); the right to a fair trial (Article 8); the principle of freedom from ex-post-facto laws (Article 9); protection of a person's honor and dignity (Article 11); political rights (Article 23); and the right to judicial protection (Article 25), all in violation of the general duty to respect and guarantee rights (Article 1.1) and the duty to enact domestic legislation (Article 2).

2. Concerning the admissibility of the complaint, the petitioners assert that they have exhausted the internal remedies, having filed a complaint within six months of fulfilling the formal requirements of the Convention and the Rules of Procedure of the IACHR. In response, the Salvadoran State asks that the petition be ruled inadmissible because it does not meet the requirements of Article 47.b of the Convention. The State argues that the events reported by the petitioners as alleged violations were examined by the national courts consistently with due process of law, and on the four occasions when the alleged victim asked for judicial protection his applications were examined and decided by the Constitutional Chamber of the Supreme Court of Justice.

3. After reviewing the positions of the parties, the Commission concludes that it does have jurisdiction to hear the claim and that the case is admissible under Article 46 of the American Convention. Consequently, the Commission decides to so notify the parties, to continue examining the substance of the claims concerning alleged violations of the American Convention, to publish this Admissibility Report and to include it in its Annual Report to the OAS General Assembly.

II. PROCEDURE BEFORE THE COMMISSION

4. On May 4, 2000, the Commission received a petition from the Human Rights Institute of the "José Simeón Cañas" Central American University, IDHUCA. On July 9, 2000, the IACHR conveyed the complaint to the Government of El Salvador, asking it to answer within 90 days. On October 31, 2000, the Government answered the petition. On November 3, 2000, the Commission conveyed the State's answer to the petitioners. On December 4, 2000, the Commission received the petitioners' reply to the State's comments, which was relayed to the latter by a note dated December 13, 2000. On January 19, 2001, the State requested a 30-day extension to comment. The Commission granted this extension on January 24, 2001. On March 1,

¹ Commissioner Florentín Meléndez, a Salvadoran national, did not take part in the discussion and decisions on this report, as provided in Article 17.2.a of the Rules of Procedure of the IACHR.

2001, the State filed additional comments on the admissibility of the petition. On February 22, 2002, the petitioners asked the Commission to rule the petition admissible.

III. POSITIONS OF THE PARTIES

A. The petitioners

5. The initial petition alleged that on August 11, 1994, Mr. Eduardo Benjamín Colindres was appointed full magistrate of the Supreme Electoral Tribunal for a period of five years. On November 22, 1996, by Decree 899, the Legislative Assembly removed him from office because of alleged irregularities in the performance of his duties. On December 2, 1996, Mr. Colindres filed with the Constitutional Chamber of the Supreme Court an application for constitutional protection against the decision of the Legislative Assembly. On November 4, 1997, the Supreme Court held that his separation from office violated his rights to a hearing and to job security. It ordered him reinstated with back pay.

6. The petitioners say that six months after the Mr. Colindres was reinstated, the full Legislature asked for a Special Legislative Committee to be set up in order to investigate his conduct, stating that the Assembly believed that "the reasons that led to the removal of that magistrate still exist and have grown stronger." On March 25, 1998, the Legislative Assembly approved Legislative Agreement 281 establishing the Special Committee.

7. On April 20, 1998, Mr. Colindres filed a constitutional protection action with the Constitutional Chamber of the Supreme Court of Justice asking for a preventive ruling that the establishment of the Special Committee violated his rights to a fair hearing and to freedom from double jeopardy, as well as the principle of the natural or pre-existing judge. The petitioners explained that the action was initially ruled admissible but, because of pressure exerted by the Legislative Assembly on the judges of the Court, on April 30, 1998, the Court reversed its admissibility ruling and dismissed the constitutional protection application, arguing that it was objectively and subjectively indeterminate.

8. As regards the proceedings before the Legislative Assembly, the petitioners say that on April 20, 1998, within the time frame stipulated for a hearing, Mr. Colindres filed with the Special Committee a brief asking it to rule that it had no jurisdiction to go on with its investigation. On April 21, 1998, the Special Committee requested from the Supreme Electoral Tribunal information to determine whether there was any new evidence supporting an expansion of the reasons given for Mr. Colindres' removal. That information was submitted by the Supreme Electoral Tribunal on April 28, 1998. On May 21, 1998, the Special Committee delivered a report to the Legislative Assembly denying it had received information from the Supreme Electoral Tribunal. In light of this concealment of the information, Mr. Colindres asked the Supreme Tribunal to resend the documents, this time to the Political Committee of the Legislative Assembly, along with a copy of the latter showing that the Legislative Committee had already received the information.

9. On May 26, 1998, Mr. Colindres filed with the Political Committee of the Legislative Assembly a brief reiterating his position that the Special Committee had no jurisdiction to guarantee a fair hearing. In that brief he also offered evidence and requested an oral hearing before the full Legislature to rebut the case against him. The petitioners assert that this brief was never added to the case file used against Mr. Colindres (number 118-167).

10. At its plenary session of July 2, 1998, the Legislative Assembly decided to remove Mr. Eduardo Benjamín Colindres from the office of full magistrate of the Supreme Electoral Tribunal. The basis for this decision was that the reasons that had prompted Decree 899, which ordered his removal in 1997, still existed.

11. On July 15, 1998, the alleged victim filed with the Supreme Court a constitutional protection action against the legislative decree. The stated grounds for this appeal was that the only way Mr. Colindres could have been removed from office was by an impeachment procedure if he had committed a crime. He also argued that the Legislative Assembly could not exercise functions beyond those assigned to it by the Constitution and, accordingly, had no authority to establish an ad hoc procedure to remove him from office, especially when that procedure disregarded his right to defend himself and meant that he was being tried twice for the same occurrences. His application also argued that the Special Committee violated his right to due process by not responding to any of his petitions and by concealing the exculpatory evidence submitted by the Supreme Electoral Tribunal. Lastly, he argued that one of the reasons given for his removal was that he had allegedly committed the crime of contempt, but was never given a hearing in that connection.

12. On May 4, 1999, the Supreme Court rejected the constitutional protection application. The Court based its decision on two considerations. First, it argued that there was a gap in the law as regards the procedure for removing magistrates of the Supreme Electoral Tribunal, but this gap had been legitimately filled by the Special Committee of the Legislature, which was empowered to hear the removal case. Second, it pointed out that Mr. Colindres had not been tried twice for the same events, but for a continuous conduct involving different events. In addition, the Supreme Court indicated that the first constitutional protection action that led to the cancellation of the removal had taken the matter back to its initial point of departure, setting aside the first decision, so that it could not be argued that there were two different decisions. The Supreme Court did not deal with the other allegations of procedural violations raised by the plaintiff.

13. On July 27, 1999, the alleged victim filed a new Constitutional protection action reiterating the procedural violations that in his judgment had affected his right to due process of law, including the concealment of evidence produced by the Supreme Tribunal and the failure to include in the case file his brief defending himself and requesting the taking of evidence. On November 5, 1999, the Supreme Court of Justice again denied his application, holding that his allegations simply "pointed to a mere illegality and lacked a constitutional foundation" and that the underlying events reflected a "mere disagreement with the procedure followed by the Legislative Assembly and with the contents of the resolution removing him from office." The Court concluded that "the Chamber is not a venue for reviewing the judgment exercised by the Legislative Assembly (...) or material assessments or procedural steps."²

14. In light of these events, the petitioners argued that the State had violated Mr. Colindres' right to a fair trial, to protection from ex-post-facto laws, to a natural or pre-existing judge, to a fair hearing; to his good name and dignity; as well as the political right of access to public office and the right to judicial protection, as recognized in Articles 8, 9, 11, 23 and 25 of the American Convention in conjunction with the obligations established in Articles 1.1 and 2 thereof. They declared that they had filed their petition within six months of the last court decision sought in the case and had fulfilled all formal requirements for filing a petition under the Convention and the Rules of Procedure of the IACHR.

B. Position of the State

15. In response, the State argued that the events described by the petitioners' as alleged violations of rights protected by the Convention had been examined by the national courts consistently with due process rules. On the four occasions Mr. Colindres had applied for judicial

² Supreme Court of Justice, Constitutional Chamber, judgment of November 5, 1999.

protection, his applications had been reviewed and decided by the Constitutional Chamber of the Supreme Court of Justice.

16. In line with the jurisdiction defined by the Salvadoran Constitution for the Constitutional Chamber of the Supreme Court of Justice to hear constitutional protection questions, each application heard by that Chamber followed the provisions of the Constitutional Procedure Law as well as due process rules consistently with the provisions of the American Convention on Human Rights.

17. Rulings in constitutional protection actions, the State points out, are final, become *res iudicata*, and may not be appealed. Consequently, in the case brought to the Constitutional Chamber to secure recognition of rights the petitioner believed infringed, internal remedies must be understood to have been exhausted.

18. Regarding the petitioners' allegations of pressures on the Supreme Court to rule against Mr. Colindres' claims, the State asserted that the hearing of cases by the Constitutional Chamber is not subject to political influence of any kind. The Chamber strictly applies the principle of judicial independence enshrined in the Salvadoran Constitution and international treaties, so that its decisions are consistent with the law and its magistrates are independent and subject only to the Constitution and the law.

19. As to the allegations concerning the procedure in the Legislative Assembly, the State replied that the legislature's actions had been duly taken into account by the Supreme Court in deciding Mr. Colindres' constitutional protection applications, with due regard at all times for the principle of separation of powers.

IV. ADMISSIBILITY

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

20. The petitioners are empowered under Article 44 of the American Convention to file petitions with the IACHR. The petition names Mr. Eduardo Benjamín Colindres as the alleged victim whose rights under the American Convention the Republic of El Salvador has undertaken to respect and guarantee. As for the State, the Commission points out that El Salvador is a party to the American Convention since June 23, 1978, when it deposited its instrument of ratification. Consequently, the Commission has jurisdiction *ratione personae* to hear the petition.

21. The Commission has jurisdiction *ratione materiae* because the petitioners allege violations of rights protected by the American Convention.

22. The Commission has jurisdiction *ratione loci* because the alleged violations took place within the territory of a State party to the American Convention. The Commission has jurisdiction *ratione temporis* because, when the alleged events began, the obligation to respect and guarantee the rights established in the American Convention was already in force for the Salvadoran State.

B. Other admissibility requirements

1. Exhaustion of internal remedies

23. Article 46.1 of the American Convention establishes as an admissibility requirement the prior exhaustion of internal remedies available within the State. The petitioners argue that the

decision by the Constitutional Chamber of the Supreme Court of Justice dated November 5, 1999, which denied the constitutional protection sought in order to remedy alleged violations of due process in the procedure to remove Mr. Colindres from office, marked the exhaustion of internal remedies in El Salvador. The State confirms this assertion. Consequently, the Commission finds that the requirement of Article 46.1 of the American Convention has been met.

2. Filing deadline

24. Article 46.1.b of the Convention provides that petitions must be filed within six months after the petitioner is notified of the final decision exhausting the internal remedies. The last domestic court decision was issued on November 5, 1999, and the petition was received by the Commission on May 4, 2000, that is to say, within the time frame prescribed by Article 46.1.b of the Convention.

3. Duplication of procedures and international *res iudicata*

25. The Commission finds that the substance of the petition is not pending in another international settlement procedure and does not substantially duplicate a previous petition examined by the Commission or other international organizations. Accordingly, the requirements of Articles 46.1.c and 47.d of the Convention have been met.

4. Characterization of the events alleged

26. In this case, it is not appropriate for the Commission at this stage of the procedure to decide whether the alleged violations of the American Convention took place. For admissibility purposes, all that the IACHR must decide at this point is whether events are alleged that, if proven, could embody violations of the Convention, as stipulated in Article 47.b thereof, and whether the petition is "manifestly groundless," that is to say, "obviously out of order," as defined in paragraph c.

27. The standard to be used in assessing these matters differs from the standard required to decide the substance of the case. The IACHR must make a *prima facie* assessment to determine whether the application supports an apparent or potential violation of a right guaranteed by the Convention, without establishing the existence of the violation. All that is called for at this point is a summary analysis, without prejudging or advancing an opinion on the merits. The Rules of Procedure of the Commission itself, by establishing two different stages for admissibility and substance, reflect this distinction between assessments made to admit a petition and to establish a violation.

28. In the view of the Commission, the State's arguments that no violation of judicial protection took place do not address the issue of admissibility by showing that the petition is manifestly groundless or clearly out of order. Those arguments will be examined by the Commission when dealing with the merits of the case.

29. The Commission finds that the arguments put forward by the petitioners are not manifestly groundless. The allegations concerning the establishment of an ex-post-facto Special Committee lacking in legal authority to impose a penalty, a Committee that is furthermore alleged to have followed a procedure inconsistent with due process of law, could constitute, if proven, violations of Articles 8 and 9 of the American Convention. When dealing with the substance of the matter, the Commission will also examine whether Mr. Colindres' separation from office violated

Article 23.1.c of the Convention,³ and whether the Tribunal's refusal to rule on the alleged violations during the constitutional protection hearing violated Article 25 of the Convention. All these articles will be examined in connection with the general provisions in Articles 1 and 2 of the Convention, as habitually done in the case law of the Inter-American system.

30. On the other hand, the Commission finds that the petitioners have not presented facts that might be characterized as a separate violation of the right to protection of a person's honor and dignity. Consequently, the petition is ruled inadmissible in regard to Article 11 of the Convention.

V. CONCLUSION

31. The Commission concludes that the case is admissible and that the Commission has jurisdiction to hear the petitioners' claim concerning alleged violations of Articles 1, 2, 8, 11, 23 and 25 of the American Convention. The Commission finds that the allegations concerning Article 11 of the Convention are not admissible.

32. By virtue of the above facts and law and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To find this petition admissible with relation to Articles 8, 9, 23 and 25 of the American Convention, in relation to the obligations established in Articles 1.1 and 2 thereof.
2. To convey this report to the petitioners and the State.
3. To continue examining the merits of the case.
4. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 14th day of the month of March, 2006. (Signed): Evelio Fernández Arévalos, President; Paulo Sérgio Pinheiro, First Vice-President; Clare K. Roberts, Freddy Gutiérrez Trejo and Víctor E. Abramovich, Commissioners.

³ See IACHR, Report 24/05 (Admissibility). Ana María Ruggeri Cova *et al.*, Venezuela, March 8, 2005, para. 45.