

REPORT No. 51/14
PETITION 1398-05
ADMISSIBILITY
DANIEL URRUTIA LABREAUX
CHILE¹
July 21, 2014

I. SUMMARY

1. On December 5, 2005, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) received a complaint filed by the Center for Justice and International Law, through its representative Mrs. Liliana Tojo and Mr. Pedro E. Díaz R., on behalf of Mr. Daniel Urrutia Labreaux (hereinafter “Daniel Urrutia” or “the alleged victim”), against the Republic of Chile (hereinafter the “Chilean State” or the “State”). In a communication dated August 13, 2012 the Center for Justice and International Law communicated its decision to withdraw as a petitioner in this case. Subsequently, on September 18, 2013, the alleged victim appointed as his representative Mr. Fabián Sánchez Matus (hereinafter “the petitioner”). The petition claims that the right to a fair trial has been violated and the right to freedom of expression has been affected by the imposition of a disciplinary sanction against Daniel Urrutia, Supervisory Judge in the city of Coquimbo, because he sent the Supreme Court of Justice an academic paper he had written in which he criticized that court’s performance.

2. In this regard, the petitioner maintains that the State of Chile is responsible for violating the rights enshrined in Articles 8 (right to a fair trial), 13 (freedom of expression), and 25 (right to judicial protection) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) in connection with Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) of that same instrument. As of the date of the decision in this report, the IACHR has not received observations from the State regarding the petition submitted on behalf of Mr. Daniel Urrutia.

3. Without prejudging the merits of the case, after analyzing the parties’ positions, and in compliance with the prior requirements under Articles 46 and 47 of the American Convention, the Commission decides to declare the petition admissible for purposes of examining the alleged violation of the rights of Daniel Urrutia as enshrined in Articles 8, 9, 13, and 25, consistent with Articles 1.1 and 2 of the Convention. The Commission also decides to inform the parties of this decision, to publish it, and to include it in its Annual Report to the General Assembly of the OAS.

II. PROCEEDINGS BEFORE THE COMMISSION

4. The Commission received the petition on December 5, 2005 and assigned it number 1389-05. On August 25, 2006, it received additional information submitted by the petitioner. On May 11, 2007, the Commission forwarded the pertinent parts of the petition to the State, asking that it submit its response within a period of two months. It repeated that request on February 11, 2009, September 13, 2011, and finally on October 25, 2013. However, as of the time of the decision in this report, the State has not responded to the request for its observations.

III. POSITION OF THE PARTIES

A. Position of the petitioner

5. The petition was submitted because the government’s Judicial Branch, through the Supreme Court of Justice, had imposed a disciplinary sanction on Daniel Urrutia, in his capacity as a Supervisory Judge in the city of Coquimbo, for sending the Supreme Court of Justice an academic paper he wrote in which he criticized the performance of the Judicial Branch.

¹ Commissioner Felipe González, a Chilean national, did not participate in the deliberations nor in the decision regarding this petition, in accordance with the provisions of Article 17.2 a) of the Commission’s Rules of Procedure.

6. The petitioner states that on April 8, 2004, the Supreme Court granted Daniel Urrutia permission to attend a certificate course on human rights at the University of Chile in Santiago. He alleges that as a requirement for obtaining the final course certificate, Mr. Urrutia wrote an academic paper called "Proposed Public Policy for Introducing a Human Rights Approach in the Work of the Judicial Branch in the Republic of Chile," which he submitted to the Supreme Court on November 30, 2004. The petitioner indicates that in this document he proposed on an academic level a human rights approach to the work of the judiciary in consistency with national constitutional norms and the international system of human rights protection, suggesting some proposals that did not require legal reforms.

7. The petitioner maintains that on December 20, 2004, the Supreme Court ordered a copy of his work to be sent to the Court of Appeals of la Serena (hereinafter the Court of Appeals) "for its information and relevant purposes." As a result, the Court of Appeals issued official letter No. 87 dated January 12, 2005, whereby it asked Daniel Urrutia for a report on what motivated him to send his work to the Supreme Court. Complying with that request, the alleged victim responded in a brief dated January 17, 2005 indicating that he sent it to demonstrate that he had completed the course. He also made clear that his work was exclusively for academic purposes.

8. The petitioner alleges that, without taking any other steps, the Court of Appeals, proceeded to issue a resolution dated March 31, 2005 imposing on the alleged victim a disciplinary measure of "written censure,"² for violating the alleged prohibitions established under Article 323(1) and (4) of the Organic Code of Courts.³ Subsequently, the alleged victim states that he filed an appeal against that decision, reiterating that the purpose of his work was exclusively academic. He states that the Supreme Court of Justice ruled on that appeal on May 6, 2005, amending the Court of Appeal's ruling on violation of Article 323(4) and reducing the sanction to a "private reprimand." He explains that in that decision the Court felt that his conduct had violated the prohibition on attacking the official conduct of other judges.

9. The petitioner argues that the sanction imposed was recorded in the affected party's curriculum vitae, which would cause injury to Judge Daniel Urrutia since it could affect his ability to advance his professional status in the judicial hierarchy.

10. As for violation of the alleged victim's freedom of expression, the petitioner states that sending the work titled "Public Policy Proposal for Introducing a Human Rights Approach in the Work of the Judicial Branch of the Republic of Chile" to the Supreme Court of Justice is a way to disseminate and communicate Judge Daniel Urrutia's ideas. Thus, the petitioner states that the Chilean State, through the actions of its Judicial Branch, affected the free expression of the ideas that originated in a work based on research and academic output, through the imposition of a disciplinary measure that causes injury to the alleged victim's ability to rise to a better position in the judicial hierarchy. The petitioner asserts that the sanction constitutes censure and excessive restriction on the right to freedom of expression.

11. With respect to the alleged violations of the judicial guarantees and the duty to adopt provisions within domestic law, the petitioner alleges that the disciplinary procedure followed against Judge Daniel Urrutia failed to respect the standards of due process. In this sense, the petitioner claims that the procedure provided in Article 536 of the Organic Code of Courts⁴ does not provide procedural formalities to

² According to the petitioner, the sanction is established under Article 537(2) of the Organic Code of Courts.

³ According to the petitioner, Article 323 establishes: "Judicial officers are prohibited from: 1. Directing to the Executive Branch, to public officials, or official corporations congratulations or criticisms for their actions; (...) 4. Publishing, without authorization of the President of the Supreme Court, written works in defense of their official conduct or attacking in any way the conduct of other judges or magistrates."

⁴ According to the petitioner, Article 536 of the Organic Code of Courts establishes that "(...) Courts of Appeals shall hear and rule on a summary basis and without trial on the complaints that injured parties file against trial judges for any errors or abuses they commit in the performance of their duties and, after providing a hearing for the respective judge, shall order appropriate measures to promptly remedy the injury leading to the complaint."

guarantee due process of law in the disciplinary summary proceeding. The petitioner also states that this procedure omitted fundamental stages and procedural methods to guarantee due process. In this regard, the petitioner maintains that Daniel Urrutia was deprived of the right to a defense in the disciplinary proceeding, given that the Court of Appeal's communication of January 12, 2005, in which it asked the alleged victim to report within a period of five days on what motivated him to send a copy of his thesis to the Supreme Court did not contain any formal notice that a disciplinary proceeding had begun nor any prior and detailed communication regarding the charges against him. The petitioner indicates that he was also given a period of five days to respond without having been summoned to a preliminary hearing to present his defense, in accordance with Article 536 of the Organic Code of Courts.

12. The petitioner also argues that when ruling on the appeal, the objectivity and impartiality of the judges of the Supreme Court was compromised because they already had knowledge of the academic text that led to the disciplinary process. In this regard, the petitioner alleges that those judges should have disqualified themselves *ex officio* and should have called upon fellow judges or ad hoc judges to rule on the appeal, as provided under Article 218 of the Organic Code of Courts.⁵ The petitioner also indicated that the remedy for constitutional protection under Article 20 of the Constitution would be ineffective in that it would be decided in the first instance by a Court of Appeals and on review by the Supreme Court of Justice.

B. Position of the State

13. As indicated above, the Inter-American Commission sent the State the pertinent parts of the petition on May 11, 2007 and asked it to submit the information it considered pertinent within a period of two months. That request was repeated on February 11, 2009, September 13, 2011, and finally on October 25, 2013. However, despite the repeated requests, at the time of the decision in this report the State has not responded to the request for observations

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

14. The petitioner is authorized, in principle, by Article 44 of the American Convention to submit petitions to the Commission. The petition indicates as alleged victim Mr. Daniel Urrutia Labreaux, an individual with respect to whom the Chilean State committed to respect and guarantee the rights enshrined in the American Convention. With respect to the State, Chile has been a party to the American Convention since August 21, 1990, the date on which it deposited its ratifying instrument. Thus, the Commission is competent *ratione personae* and *ratione temporis* to examine the petition.

15. In addition, the IACHR is competent *ratione loci* and *ratione materiae* to hear the petition in that it alleges violations of human rights established in the American Convention and the alleged actions were perpetrated in the territory of the Republic of Chile, a State Party to the Convention.

B. Admissibility requirements

1. Exhaustion of the domestic remedies

16. Article 46.1 of the American Convention establishes as a requirement for the admission of a petition that domestic remedies have been pursued and exhausted, in accordance with generally recognized principles of international law. Both the Commission and the Inter-American Court have indicated that only remedies suitable for remedying the violations allegedly committed must be exhausted.⁶ Article 46.2

⁵ According to the petitioner, Article 218 states: "In those cases where the Supreme Court cannot act due to the disqualification of a majority or all of its members, the panel shall be made up of judges from the Appeals Court of Santiago, called upon according to their seniority".

⁶ I/A Court H.R. *Velásquez Rodríguez v. Honduras Case*. Merits. Judgment of July 29, 1988. Series C, No. 4, para. 64.

establishes that this requirement shall not apply when: a) the domestic legislation of the State concerned does not afford due process of law for the right or rights that have allegedly been violated; b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

17. The Commission reiterates that it is not its task to identify *ex officio* the domestic remedies to be exhausted but rather that the State should indicate on a timely basis the domestic remedies that must be exhausted and how effective they are.⁷ As the Inter-American Court has stated: “the State submitting such objection must specify the domestic remedies that have not been exhausted, as well as show that such remedies were available and adequate, suitable, and effective.”⁸

18. In the instant case, the petitioner alleges that the remedies were exhausted through the decision of the Supreme Court of Justice of May 6, 2005, which amended the decision of March 31, 2005 of the Court of Appeals imposing a disciplinary sanction on the alleged victim, a decision they considered to have violated rights protected by the Convention. The State, for its part, failed to submit its observations regarding the admissibility of the case and, therefore, did not question whether the remedies had been exhausted.

19. The Commission reiterates that the purpose of the requirement to exhaust domestic remedies is to allow domestic authorities to examine the alleged violation of a protected right and, if appropriate, to have the opportunity to resolve the matter before it is heard by an international body.⁹

20. In the present case, the complaint related to the imposition of a sanction on the alleged victim as a result of having sent an academic paper to the Supreme Court of Justice was heard on appeal by that court, which in a decision dated May 6, 2005 decided to impose the sanction of a “private reprimand” on Judge Urrutia. In view of what has been presented by the petitioner, the Commission believes that, through the appeal heard by the Supreme Court of Justice, the State had the opportunity to hear the alleged victim’s complaint and to protect the rights he alleged had been violated, so that the requirement established in Article 46.1 a) of the Convention has been met.

21. The IACHR notes that the petitioner additionally referred to the alleged ineffectiveness of a constitutional protection remedy under Article 20 of the Political Constitution of the Republic of Chile that he could have filed against the decision of the Supreme Court of Justice. The petitioner stated that this remedy would be ineffective since it would be decided in the first instance by an Appeals Court and on review by the Supreme Court of Justice.¹⁰

22. On one hand, in principle it is sufficient for someone whose human rights have allegedly been violated to file and exhaust a series of remedies; it is not necessary that they exhaust all the remedies that are theoretically available. On the other hand, even considering this option, the Commission notes with respect to this remedy seeking constitutional protection that, according to the petitioner, the competent authority to hear this remedy would in the final instance be the Supreme Court of Justice that had previously decided to impose

⁷ I/A Court H.R. *Reverón Trujillo v. Venezuela Case*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2009. Series C, No. 197, para. 23.

⁸ I/A Court H.R. *Usón Ramírez v. Venezuela Case*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C, No. 207, para. 19. Citing *Velásquez Rodríguez Case*, para. 91; *Garibaldi v. Brazil Case*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 23, 2009. Series C, No. 203, para. 46, and *Escher et al. v. Brazil Case*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 6, 2009. Series C, No. 199, para. 28.

⁹ IACHR, Report No. 6/13, Petition 372-04 Admissibility, Irma Orellana López Vda. de Romero et al., Guatemala, March 19, 2013, para. 22.

¹⁰ The petitioner establishes that Article 20 of the Constitution of Chile states that “An individual whose rights and guarantees under Article 19...are denied, curtailed or threatened in any way by virtue of abusive or unlawful acts or omissions may – on his own or through another party acting on his behalf – turn to the respective Court of Appeals...”

a sanction on the alleged victim. Consequently, in view of the information available and the failure of the State to contradict that information, the Commission feels that for purposes of admissibility the aforementioned remedy would be ineffective, therefore the alleged victim could not be required to exhaust it.

2. Timeliness of the petition

23. The American Convention requires that in order for a petition to be admitted by the Commission, it must be submitted within six months of the date on which the party alleging the violation of his rights was notified of the final judgment. The Commission notes that the Supreme Court of Justice imposed a sanction on the alleged victim through its decision of May 6, 2005 and the petitioner indicated that he was notified of this decision on June 6, 2005. Therefore, as the State has not disputed the petitioner's assertions and given that the petition was received by the IACHR on December 5, 2005, the Commission deems the requirement established by Article 46.1 b) of the American Convention to have been met.

3. Duplication of proceedings and international *res judicata*

24. The file does not indicate that the subject of the petition is pending in any other international proceeding nor that it reproduces a petition already examined by this or any other international body. Thus, the requirements established in Articles 46.1 c) and 47 d) of the American Convention should be considered to have been met.

4. Colorable claims

25. For the purposes of admissibility, the Commission must decide whether the petition states facts that could tend to establish a violation, as stipulated in Article 47 b) of that instrument, or whether the petition is "manifestly groundless" or "obviously out of order," in accordance with paragraph c) of that article. The standard for evaluating these requirements is different from that used to rule on the merits of a petition. The IACHR must undertake a *prima facie* evaluation to determine whether the complaint demonstrates an apparent or potential violation of a right protected by the American Convention, but not whether such a violation occurred. Such an evaluation is a summary review that does not prejudice or advance an opinion on the merits.

26. Neither the American Convention nor the IACHR Rules of Procedure requires petitioners to identify the specific rights allegedly violated by the State in the matter submitted to the Commission, even though the petitioners may do so. However, it is the duty of the Commission, based on the system's jurisprudence, to determine in its admissibility report which provision of the relevant Inter-American instruments is applicable and could be concluded to have been violated, should the alleged facts be proven by means of sufficient evidence and legal arguments.

27. According to the information provided by the petitioner, the Commission considers that the complaint regarding the imposition of a disciplinary measure against Judge Daniel Urrutia as a result of having sent the Supreme Court of Justice his ideas in an academic paper, subject to sanction under Article 323(4) of the Organic Code of Courts prohibiting "publishing, without authorization from the President of the Supreme Court, writings in defense of one's official conduct or attacking in any way the conduct of other judges or magistrates," could constitute, upon study of the merits, a violation of Article 13 of the American Convention in connection with Articles 1 and 2 of the same instrument.

28. The Commission considers necessary to analyze in a merits stage whether the standard applied is consistent with the principle of legality, a principle that must be observed in the context of disciplinary proceedings,¹¹ since otherwise this could constitute a violation of Article 9 of the Convention. Additionally, in a merits stage, the Commission will examine whether the procedures available provided the

¹¹ IACHR, *Guarantees for the Independence of Justice Operators*, OEA/Ser.L/V/II. Doc. 44, adopted 5 December 2013, para. 207.

protection and judicial guarantees and if the situation presents issues relative to the judicial independence. The above in light of Articles 8 and 25 in connection with Articles 1.1 and 2 of the American Convention.

V. CONCLUSIONS

29. The Commission concludes it is competent to examine the complaints submitted by the petitioner regarding the alleged violation of Articles 8, 9, 13, and 25, consistent with Articles 1.1 and 2 of the Convention and that these complaints are admissible in accordance with the requirements established in Articles 46 and 47 of the American Convention.

30. Based on the factual and legal arguments presented above and without involving a prejudgment on the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this petition admissible with respect to Articles 8, 9, 13, and 25 of the American Convention, in connection with Article 1.1 and 2 thereof.
2. To transmit this report to the petitioner and to the State.
3. To continue with its analysis of the merits of the case.
4. To publish this report and include it in the Commission's Annual Report to the General Assembly of the OAS.