

REPORT Nº 68/02¹
ADMISSIBILITY
PETITION 649/01
VICENTE ANÍBAL GRIJALVA BUENO
ECUADOR
October 10, 2002

I. SUMMARY

1. On September 13, 2001, the Inter-American Commission on Human Rights (hereinafter "the Commission") received a complaint lodged by Dr. Francisco López Bermúdez, the director of the Andean Democratic Audit, an Ecuadorian nongovernmental organization, on behalf of Vicente Anibal Grijalva Bueno, (hereinafter "the petitioner"), against the Republic of Ecuador (hereinafter "Ecuador" or "the State") claiming a breach of legal due process and the absence of judicial protection in the violation of the right to be heard by the appropriate judge since he was being prosecuted by a military court. In addition he claimed a violation of the right to judicial protection due to the Ecuadorian Government's failure to abide by a resolution handed down by the Court of Constitutional Guarantees. The petitioner claims violations of Articles 8 (right to a fair trial) and 25 (judicial protection) of the American Convention on Human Rights (hereinafter "the American Convention"), all in breach of the obligations set forth in Article 1(1) thereof.

2. According to the petition, during the administration of President León Febres-Cordero (1984-88), a series of human rights abuses were committed. In August 1991, Capt. Grijalva, Security Chief of the First Naval Zone, was apprised of these facts by, *inter alia*, Balter Prías, an agent of the Naval Intelligence Service. Capt. Grijalva immediately reported this information to his superiors. At that moment a clear and persistent campaign of persecution was launched against him; he was even charged with a series of crimes that he did not commit, which ultimately led to his dismissal and his conviction by military courts. The petition maintains that this violated Mr. Grijalva's right to due process and judicial protection, as set forth in Articles 8 and 25 of the American Convention.

3. Consequently, since the petition meets the requirements set in Articles 46 and 47 of the American Convention, the Commission decides to declare this case admissible, to notify the parties of that decision, and to continue with an analysis of the merits with respect to the alleged violations of Articles 8, 25, and 1(1) of the American Convention. At the same time, it decides to publish this report.

II. PROCESSING BY THE COMMISSION

4. On November 19, 2001, the Commission began processing this petition as Nº P-649/01 and transmitted the relevant parts to the Ecuadorian State, with a two-month deadline for it to submit information.

5. On April 30, 2002, the Commission received the State's response to the petition. This response was forwarded to the petitioner on May 17, 2002, with a request for him to submit his comments within a period of 30 days. On June 18, 2002, the Commission received the petitioner's comments on the State's response. On July 2, 2002, the comments were transmitted to the State, along with a request for any additional information to be

¹Dr. Julio Prado Vallejo, an Ecuadorian national, did not participate in this case in compliance with Article 17 of the Commission's Rules of Procedure.

submitted within the following 30 days. On August 7, 2002, the State requested a 30-day extension for submitting its reply. On August 9, 2002, the Commission granted this extension but to date, the State has not furnished any further information.

III. POSITIONS OF THE PARTIES REGARDING ADMISSIBILITY

A. Petitioner

6. On October 26, 1992, the Council of Superior Officers, through a secret committee set up by Commanding Admiral of the Navy Jezid Jaramillo, resolved to discharge Mr. Grijalva from the service on allegations of bad conduct. Mr. Grijalva maintains that his discharge was based on false evidence and claims that Capt. Fausto Morales Villota, the assistant director of the Intelligence Service, produced false documents to incriminate him and another group of seamen in alleged irregularities in the port of Bolívar.

7. On November 19, 1993, Commanding Admiral of the Navy Oswaldo Viteri ordered the law judge of the First Naval Zone, Rear Admiral Hugo Cañate Jalón, to begin legal action against Mr. Grijalva, even though the First Naval Zone's investigating judge ruled that there were no grounds for a criminal trial. On November 29, 1993, the commanding officer of the First Naval Zone, Hugo Cañarte, ordered the First Naval Zone's military criminal judge to begin summary proceedings. On November 30, 1993, criminal judge Pablo Burgos Cuenca opened the summary proceeding; the prosecuting officer was Dr. Ramiro Cruz Mayorga, the Third Naval Zone's prosecutor, who had, in conjunction with Third Zone judge Carlos Romero, covered up the crimes committed in the case of Stalin Bolaños (the case that Mr. Grijalva had reported to his superiors).

8. In this trial Mr. Vicente Grijalva was convicted in a military court, on the basis of the same accusations and evidence that led to his discharge. The judge at this trial was Capt. Shuber Barriga Chiriboga, a lawyer who had previously ruled that the death of Stalin Bolaños was due to alcoholic poisoning, thereby completely exonerating the individual responsible (Fausto Morales).

9. On October 19, 1998, the First Naval Zone's Law Court opened the plenary session and Mr. Grijalva was criminally charged before military courts (his earlier discharge notwithstanding) with the crime of abuse of authority, based on the same incidents that had led to his dismissal from the service. On March 13, 2000, presiding judge Admiral Fernando Donoso Morán handed down a conviction against Mr. Grijalva. On March 13, 2001, the Court of Military Justice issued a judgment upholding Mr. Grijalva's abuse of authority conviction.

10. On September 8, 1994, Mr. Grijalva asked the Court of Constitutional Guarantees—the supreme authority on matters related to human rights and constitutional guarantees—to analyze his discharge from the navy. On September 12, 1995, the Court of Constitutional Guarantees ordered the navy to reinstate Mr. Grijalva and another eight sergeants who had also been discharged from the service because the dismissal procedures had failed to respect their right of defense. The provisions of that resolution have still not been enforced.

B. State

11. In its initial reply, the State gave an overview of the history of Mr. Grijalva's case before the Ecuadorian courts; it also stated that the appropriate and effective domestic remedies for resolving the petitioner's legal situation had not yet been exhausted since there was still an outstanding criminal case against Mr. Grijalva for allegedly collecting illicit sums

of money and granting fuel permits, initiated by the military criminal judge of the First Naval Zone, who commenced the trial proceedings on June 15, 1994.

12. In addition, the State maintains that the petitioner could still file a writ for review, set forth in Article 385 of the Ecuadorian Code of Criminal Procedure in the following terms: "the remedy of review shall be applicable to all convictions and shall be lodged with the Supreme Court of Justice in the following cases: ..."; in its submission, however, the State does not specify in which cases.

13. Secondly, following the failure to exhaust the available domestic remedies, the State maintains that this petition has exceeded the six-month deadline stipulated in the Convention, in that Mr. Grijalva lodged his complaint with the Commission in November 2001, in that eight months had gone by since the final judgment. The final judgment is taken to mean the act of March 31, 2001, by which the Court of Military Justice dismissed the appeal filed by Mr. Grijalva against the judgment of the military criminal judge and upheld in its entirety the judgment handed down by the lower court judge.

14. The State maintained that Mr. Grijalva enjoyed complete access to judicial remedies and that he has described nothing that would tend to indicate a violation of his right to due process under Article 8 of the Convention. The State further pointed out that the complaint alleging a violation of the right to judicial protection, set forth in Article 25 of the American Convention, is inadmissible, in that said article says that the State must guarantee the possibility of developing judicial remedies, which it did do in this case.

IV. ANALYSIS OF ADMISSIBILITY

A. Competence of the Commission *Ratione Personae*, *Ratione Materiae*, *Ratione Temporis*, and *Ratione Loci*

15. The petitioner is entitled, under Article 44 of the American Convention, to lodge complaints with the Commission. The petition names Mr. Vicente Aníbal Grijalva Bueno as the alleged victim. Mr. Grijalva is a person under the terms of Article 1(2) of the American Convention. The respondent State, the Republic of Ecuador, ratified the American Convention on December 28, 1977. The Commission therefore has competence *ratione personae* to examine the petition.

16. As regards its competence *ratione loci*, the alleged violations were committed within the jurisdiction of the Republic of Ecuador.

17. With respect to its competence *ratione temporis*, the alleged violations were committed at a time after the ratification of the American Convention on December 28, 1977.

18. As for its competence *ratione materiae*, the Commission is competent because the alleged violations are of rights protected by the American Convention.

B. Other Requirements for Admissibility

a. Exhaustion of Domestic Remedies

19. Article 46 of the American Convention provides that the admissibility of a case depends on the remedies available under domestic law having been "pursued and exhausted in accordance with generally recognized principles of international law." This requirement was

set to guarantee the State in question the opportunity of resolving disputes within its own legal framework.²

20. The Commission thus understands that in the case at hand, the remedies offered by military criminal law have been exhausted, and so the judgment of March 13, 2001, handed down by the Court of Military Justice constitutes, for the purposes of Article 46(a) of the American Convention, the final judgment.

b. Filing Period

21. As stipulated in Article 46(1)(b) of the Convention, all petitions must be lodged on a timely basis in order to be admitted: that is, within the six months following the date on which the complainant was notified of the final decision adopted under domestic law. The six-month rule guarantees legal certainty and stability once a decision has been handed down.

22. According to the case file before the Commission, the judgment of the Court of Military Justice was handed down on March 13, 2001, six months prior to the submission of the complaint to the Commission, on September 13, 2001.

c. Duplication of Proceedings and *Res Judicata*

23. Article 46(1)(c) states that the admissibility of a petition depends on the matter not being "pending in another international proceeding for settlement," and Article 47(d) of the Convention provides that the Commission cannot admit a petition that is "substantially the same as one previously studied by the Commission or by another international organization." The parties in the case at hand have not claimed the existence of either of these grounds for inadmissibility, nor can the existence of either one be inferred from the proceedings.

d. Characterization of the Alleged Facts

24. Article 47(b) of the American Convention stipulates that any petition that does not state facts that tend to establish a violation of the rights guaranteed therein shall be declared inadmissible. In this regard, the Commission concludes that the alleged facts can give rise to questions related to the guarantees set forth in Article 25(c) of the Convention, namely ensuring that the competent authorities enforce, with respect to all persons, all judicial decisions in which remedies are granted.

25. The Commission considers that, in this case, if the facts are proven to be true, they could tend to establish a violation of the rights protected by Articles 8, 25(c), and 1(1) of the American Convention.

V. CONCLUSIONS

26. The Commission concludes that it is competent to hear this case and that the petition is admissible in conformity with the exception provided for in Article 46(2)(d) of the American Convention.

² The Commission cannot avoid noting the contradictory position adopted by the State. Thus, on the one hand it argues that exhaustion has not taken place (paragraphs 10 and 11) and, on the other, that the six-month deadline has expired (paragraph 13).

27. Based on the foregoing considerations of fact and law, and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible with respect to Articles 1(1), 8, and 25 of the American Convention.
2. To notify this decision 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 to include it in the Annual Report to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on the 10th day of October, 2002. (Signed): Juan Méndez, President; Marta Altolaquirre, First Vice-President; José Zalaquett, Second Vice-President; Commissioners Robert K. Goldman, Clare Kamau Roberts, and Susana Villarán.