

REPORT N° 36/04
PETITION 1643/02
ADMISSIBILITY
YOLANDA OLGA MALDONADO ORDÓÑEZ
GUATEMALA
March 11, 2004

I. SUMMARY

1. On July 15, 2002, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") received a petition submitted by Olga Yolanda Maldonado Ordóñez and the lawyers Dr. Alejandro Sánchez and Dr. Jorge Raúl Rodríguez Ovalle (hereinafter "the petitioners") alleging that the State of Guatemala (hereinafter "the State" or "the Guatemalan State") failed to respect Mrs. Maldonado Ordóñez' right to a fair trial and due judicial protection following her dismissal from her position as a teacher and assistant in the Office of the Human Rights Ombudsman (Procuraduría de los Derechos Humanos) in the Departments of Quiché and Quetzaltenango.

2. The petitioners maintain that the State is responsible for violating Mrs. Maldonado Ordóñez' right to a fair trial and to judicial protection, as enshrined in Articles 8 and 25 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"), by denying her any possibility of a higher-authority review of the decision to dismiss her from her post as Departmental Assistant in the Office of the Human Rights Ombudsman. With respect to the admissibility of the case, the State argues that remedies available within the domestic jurisdiction were not exhausted, because the petitioners did not avail themselves of all remedies provided for under domestic law. For their part, the petitioners argue that they pursued and exhausted the remedies available for reinstating Mrs. Maldonado Ordóñez in her job.

3. After examining the positions of the parties, the Commission has concluded that it is competent to decide on the petition submitted by the petitioners, and that the case is admissible in accordance with Articles 46 and 47 of the American Convention.

II. PROCEEDINGS BEFORE THE COMMISSION

4. On August 19, 2002, the IACHR began processing the petition classified as No. 1643/2002, in accordance with its Rules of Procedure in effect since May 1, 2001, and it transmitted the pertinent portions of the petition to the State, asking it to present its observations within two months. On November 1, 2002, the Guatemalan State requested an extension of the time limit for presenting its observations, and on November 8, 2002, the IACHR granted it a one-month extension.

5. On December 15, 2002, the State presented its observations, which were transmitted to the petitioners on December 26, 2002, giving them 30 days to present their response. On February 10, 2003, the petitioners sent their observations on the State's response. These observations constitute the last communication in the record.

III. POSITIONS OF THE PARTIES

A. Position of the petitioner

6. The petitioners allege that on April 5, 2000, Olga Yolanda Maldonado Ordóñez was notified that there were grounds for her dismissal from her position as Departmental Assistant in the Office of the Human Rights Ombudsman of Guatemala, stemming from a complaint filed by her siblings, in which they claimed that Mrs. Maldonado Ordóñez and her sister had altered public documents relating to a family inheritance. The dismissal also applied to her position as a teacher, which was a tenured position until February 15, 2002.

7. The petitioners maintain that on May 18, 2000, the Office of the Human Rights Ombudsman ordered Mrs. Maldonado Ordóñez' removal from her posts, even though she had disproved each and every one of her brothers' allegations. The petitioners add that the acts reported by her siblings were apparently crimes, yet at no time were those acts brought before the courts. The petitioners insist that the arguments for her dismissal were based on the damage that the complaint against her might cause the institution, even though the dispute concerned a purely personal matter. The dismissal took effect by means of Order 81/2000, issued by the Human Rights Ombudsman on May 16, 2000, which invoked Article 74 (4) and 74 (15) of that institution's Personnel Regulations regarding offenses committed against property that harm the institution and illegal acts committed for the purpose of harming the institution.

8. They also state that, for health reasons, on May 18, 2000, Mrs. Maldonado Ordóñez submitted her definitive resignation from the temporary post of Departmental Assistant and from the permanent position she held as a teacher; and that, when her health recovered, she withdrew her resignation in writing in a document dated May 22, 2000, and signed in the presence of a notary public.

9. As to the exhaustion of domestic remedies, the petitioners report that on May 23, 2000, Mrs. Maldonado Ordóñez filed an appeal with the National Civil Service Office. They also report that on May 29, 2000, that Office determined that it lacked the administrative competence to consider questions relating to the reinstatement or payment of employees, by virtue of the provisions governing State institutions and agencies. On June 2, 2000, Mrs. Maldonado Ordóñez filed an appeal with the Office of the Human Rights Ombudsman. Her appeal was declared groundless by the Head of that Office's Human Resources Unit in Official Letter No. 285-2000-URH, dated June 16, 2000. In that letter, the Ombudsman's Office states that that the submission of her resignation from the post was proof that the alleged victim had accepted her dismissal.

10. The petitioners argue that, acting in accordance with Article 80 of the Personnel Regulations of the Office of the Human Rights Ombudsman, Mrs. Maldonado Ordóñez filed an appeal with the Second Chamber of the Court of Appeals for Labor and Social Security Matters, which, on June 26, 2000, decided not to hear the case, since the appropriate body of law giving the Court of Appeals jurisdiction in this matter was the Labor Code and not the Personnel Regulations. They argue that on August 24, 2000, they challenged the constitutionality of that decision before the Second Chamber, pointing out that application of the articles of the Labor Code and the Civil Service Act was unconstitutional, because it impeded the access to justice contemplated in the Constitution. They add that, on September 6, 2000, the Court of Appeals dismissed the constitutionality challenge and reiterated that it could not base its jurisdiction on a regulation. The petitioners claim that, through the decision of the Second Chamber of the Court of Appeals for Labor and Social Security Matters, the Guatemalan State prevented access to justice and due process to the detriment of Mrs. Maldonado Ordóñez.

11. Finally, on September 9, 2000, the petitioners report that they appealed to the Constitutional Court, challenging the constitutionality of the decision handed down by the Second Chamber of the Court of Appeals. On October 9, 2001, the Constitutional Court dismissed the appeal, arguing that proper channels had not been followed.

B. Position of the State

12. The State asserts that, in effect, Mrs. Olga Yolanda Maldonado Ordóñez was dismissed from her position. It also claims that the Office of the Human Rights Ombudsman has a copy of the release form and receipt signed by Mrs. Maldonado Ordóñez on May 31, 2001, showing payment of Q11,727.48, which covered her retirement vacation, annual bonus (bonus 14), specific performance, vacation bonus, and Christmas bonus, all of these relating to the period between December 1999 and May 2000. The State adds that Mrs. Maldonado Ordóñez signed a full and complete release giving up the right to seek any further compensation from her employer through civil, criminal, administrative, commercial, or, especially, labor procedures, and indicating by her signature of the document that she was satisfied with the settlement she

had received. The State also reports that she appeared at the Human Resources Unit of the Office of the Human Rights Ombudsman to sign the official document acknowledging her dismissal on September 26, 2000.

13. The State argues that Mrs. Maldonado Ordóñez' was not tenured in her positions. Her duties had been assigned against the budget for 1999, 2000, and 2001.

14. As to the admissibility of the case, the State argues that the complaint is not admissible, because Mrs. Maldonado Ordóñez had access to administrative channels to defend her interests. The State adds that the fact that the steps she took were unsuccessful was not sufficient grounds to claim that her right to a defense was violated. The State also reports that Mrs. Maldonado Ordóñez presented her definitive resignation from the position she occupied in the Office of the Human Rights Ombudsman on May 18, 2000, and that four days later she withdrew her definitive resignation.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence of the Commission

15. The petitioners are in principle entitled under Article 44 of the American Convention to file a petition with the IACHR. The petition identifies as the alleged victim an individual with respect to whom Guatemala undertook to respect and guarantee the rights enshrined in the American Convention. With respect to the State, the Commission notes that Guatemala has been a party to the American Convention since May 25, 1978, the date on which it deposited the corresponding instrument of ratification. The Commission is therefore competent *ratione personae* to consider the petition.

16. The Commission is competent *ratione loci* to hear the petition, insofar as it alleges violations of rights protected under the American Convention that are alleged to have taken place within the territory of a State Party. The IACHR is also competent *ratione temporis*, insofar as the obligation to respect and guarantee the rights protected by the American Convention was already in force for the State at the date on which the acts referred to in the petition are alleged to have occurred. Finally, the Commission is competent *ratione materiae*, since the petition denounces violations of human rights protected by the American Convention.

B. Requirements for admissibility

1. Exhaustion of domestic remedies

17. The petitioners argue that the victim pursued the available judicial remedies in order to seek reinstatement in her position, including an appeal to the Second Chamber of the Court of Appeals for Labor and Social Security Matters. The State, for its part, argues that the victim should have attempted to exhaust all remedies available under domestic law, without indicating what those remedies are.

18. The Commission considers that, given the circumstances of the present case, the victim pursued and exhausted the means at her disposal to seek reinstatement in her position, in the wake of proceedings that were conducted without judicial guarantees and protection. Article 46.1 (a) of the Convention stipulates that for a petition to be admitted "the remedies under domestic law [must] have been pursued and exhausted in accordance with generally recognized principles of international law."

19. With respect to appropriate remedies, Article 80 of the Civil Service Act ¹establishes the procedure for challenging resolutions:

Article 80. Procedure. The claims referred to in Article 19 (6) of this law, and the others contained therein, must be pursued in the following manner: the interested party must submit the claims in writing to the director of the National

¹ Ley de Servicio Civil, Decreto No. 1748, Guatemala, May 10, 1968

Civil Service Office within three days after notification of the decision being challenged. Upon receipt of the submission, the director will refer it immediately to the National Civil Service Board, which must resolve the matter within 30 days. In cases of dismissal only, if the Board does not issue a decision within that time period, the administrative route will be deemed exhausted, and the petition rejected, whereupon the appellants may appeal to the Chambers of Labor and Social Security. Those tribunals shall decide the matter in accordance with normal labor procedures, at a single level of jurisdiction. In other cases covered by this law, the Board must decide any claim within the same period of 30 days, but its resolutions shall be deemed final and not subject to appeal.

20. In light of the foregoing, the victim presented a written challenge to the National Civil Service Office (on May 29, 2000, that office decided that it was not competent to consider the challenge). In view of that denial and pursuant to the procedure set out in Article 80 of the Personnel Regulations of the Office of the Human Rights Ombudsman, on June 20, 2000, the alleged victim filed an appeal with the Second Chamber of the Court of Appeals for Labor and Social Security Matters. That regulation provides that:

The Human Rights Ombudsmen must settle the appeal for a review within 10 business days of its filing; if the appeal is declared to be groundless or is not settled within the prescribed time, the affected party may appeal to the Chambers of Labor and Social Security within the following five business days. The appeals procedure shall be that established in the Labor Code.

21. On June 26, 2000, the Second Chamber decided that it was not competent to hear the petition, because the Chambers of Labor and Social Security are competent to hear cases only at a single level of jurisdiction, and this is limited to cases of definitive administrative decisions issued by the National Civil Service Board, pursuant to Article 80 of the Civil Service Act. Mrs. Maldonado Ordóñez then attempted, in accordance with the Civil Service Act, to challenge the decision to dismiss her. On October 9, 2001, the Constitutional Court declared her constitutional challenge out of order, because the interested party had failed to use the appropriate channels to challenge application of the rules, in the course of which she could have argued the constitutional questions in the appropriate jurisdiction. All the bodies to which she turned, administrative and judicial alike, decided against Mrs. Maldonado Ordóñez, on the grounds that they lacked competence to decide on the matter.

22. Given the outcome of the appeals and representations made by the victim before the authorities, the Commission concludes that the requirement of prior exhaustion of domestic remedies, pursuant to Article 46.1 of the Convention, has been satisfied.

2. Time period for submission of the petition

23. In accordance with Article 46.1 (b) of the Convention, a petition must be lodged within a period of six months from the date on which the party alleging violation of his or her rights was notified of the final judgment at the domestic level. This complaint was submitted on July 15, 2002, within six months following the decision of the Constitutional Court of October 9, 2001, notified to the victim on January 15, 2002, that decided on the appeal challenging the constitutionality of the rules applied in the case of Mrs. Maldonado Ordóñez. Consequently, this requirement has been satisfied.

3. Duplication of proceedings and *res judicata*

24. The record contains no indication that the matter is pending in another international proceeding, or that it duplicates a petition already considered by this or another international body. Consequently, the requirements stipulated in Article 46.1 (c) and in Article 47 (d) of the Convention are satisfied.

4. Characterization of the facts alleged

25. The Commission considers that the Personnel Regulations of the Office of the Human Rights Ombudsman, as well as the Civil Service Act, include measures for challenging decisions through the courts. Yet the petitioners argue that at the time Mrs. Maldonado Ordóñez attempted to challenge her dismissal, all existing mechanisms established by regulations and law prevented her access to the judicial route. Indeed, the bodies to which she turned declared themselves incompetent to consider the merits of her claim, and even the Constitutional Court declared that it lacked jurisdiction to consider the constitutionality of those rules.

26. The IACHR will have to examine whether the impediments that Mrs. Maldonado Ordóñez faced in obtaining a decision on the merits of her complaint were due to the way in which those remedies are provided in laws and regulations, or to their rejection by the institutions to which Mrs. Maldonado Ordóñez turned. The Commission will also have to decide whether this constitutes a violation of Articles 8 and 25 of the Convention.

27. The Commission considers that the petitioners' allegations of violations of the victim's due judicial guarantees and protection could characterize a violation of the rights enshrined in Articles 2, 8 and 25, in relation to Article 1.1 of the American Convention.

V. CONCLUSION

28. The Commission concludes that the petition is admissible, and that it is competent to review the case submitted by the petitioners as it relates to violation of Articles 8 and 25, in accordance with Article 1.1 of the Convention, consistent with the requirements of Articles 46 and 47 of the American Convention.

29. Based on the factual and legal arguments set forth above, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS DECIDES:

1. To declare the present case admissible with respect to Articles 1.1, 8, and 25 of the American Convention on Human Rights.
2. To notify the parties of this decision.
3. To initiate consideration of the merits of the case.
4. To make this report public, and to 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 11th day of the month of March, 2004.
(Signed): José Zalaquett, President; Clare K. Roberts, First Vice-President; Susana Villarán, Second Vice-President; and Evelio Fernández Arévalos, Paulo Sergio Pinheiro, Freddy Gutiérrez, and Florentín Meléndez, members of the Commission.