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Title/Style of Cause:	Santos Hernan Galeas Gonzalez v. Honduras
Doc. Type:	Decision
Decided by:	President: Juan Mendez; First Vice-President: Marta Altolaguirre; Second Vice-President: Jose Zalaquett; Commissioners: Robert K. Goldman, Clare K. Roberts.
Dated:	27 February 2002
Citation:	Galeas Gonzalez v. Honduras, Petition 11.627, Inter-Am. C.H.R., Report No. 20/02, OEA/Ser.L/V/II.117, doc. 1 rev. 1 (2002)
Represented by:	APPLICANTS: the Rights International, The Center for International Human Rights Law and Central American Political Asylum Project American Friends Service Committee
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I. SUMMARY

1. On May 14, 1996, the organizations, Rights International, The Center for International Human Rights Law, and Central American Political Asylum Project American Friends Service Committee (hereinafter “the petitioners”) lodged a petition with the Inter-American Commission on Human Rights (hereinafter “the Commission”), alleging the international responsibility of the Republic of Honduras (hereinafter “Honduras”, “the State” or the “Honduran State”) for violation of several rights enshrined in the American Convention on Human Rights (hereinafter the “Convention” or the “American Convention”) in Articles 1(1) (obligation to respect rights), 7 (right to personal liberty), 13 (freedom of thought and expression), and 24 (right to equal protection), to the detriment of Mr. Santos Hernán Galeas González (hereinafter “Mr. Galeas” or “the alleged victim”).

2. From 1980 to 1987, Mr. Galeas vented various opinions, inter alia, regarding alleged acts of corruption by various public officials, arms trafficking, drug trafficking, and extrajudicial executions. In 1989, the Colegio de Periodistas de Honduras [Journalists’ Association of Honduras] (hereinafter “CPH”) instituted criminal proceedings against Mr. Galeas, charging him with illegal assumption of powers and professional title to the detriment of the CPH. According to the petitioners, the foregoing was an act of reprisal against documents published by Mr. Galeas. The alleged victim was later released on bail pending trial, after which the proceeding progressed no further. The petitioners alleged that the aforesaid proceeding as well as the obligation for journalists in Honduras to be members of a professional association constitute a violation of the freedom of expression of Mr. Galeas.

3. Mr. Galeas was later dismissed from his job and the CPH sent, according to the petitioners, a circular to the various mass media outlets in Honduras warning that Mr. Galeas was not licensed to work as a journalist and there was a fine of 5,000 lempiras for any that hired him. Further, Mr. Galeas is purported to have received death threats, which prompted him to leave the country.

4. According to the petitioners, from 1991 to 1992 Mr. Galeas worked as a journalist in Venezuela and returned to Honduras in February 1992, where he alleges that he received another threat from a public official, which apparently encouraged to move to the United States, where he was granted political asylum on August 2, 1994.

5. The State denied the existence of such threats, and held that the statute of limitations on the case brought by the CPH against Mr. Galeas had run, and therefore the latter should not be afraid to return to the country. The State further said that the CPH is a private entity, for which reason its acts do not give rise to the international responsibility of the Honduran State.

6. The Commission, after reviewing the positions of the parties regarding exhaustion of domestic procedures and the other admissibility requirements under Articles 46 and 47 of the Convention, finds that the instant case is inadmissible.

II. PROCESSING BY THE COMMISSION

7. On May 22, 1996, the Commission opened case 11.627, pursuant to the provisions contained in the Rules of Procedure in force, and requested the petitioners to translate the petition, in order to transmit it to the State of Honduras. On December 18, 1996, the Commission received the Spanish version of the petition lodged by the petitioners and on March 25, 1997, transmitted the pertinent portions thereof to the State, granting it 90 days to submit its reply. The State replied on August 14, 1997, and the pertinent portions of the reply were duly conveyed to the petitioners.

8. On October 22, 1997, the petitioners presented their observations to the reply of the State, and these were duly forwarded to the Honduran State on November 21 of that year. On December 18, 1997, the State submitted a brief containing comments on the petitioners' observations, the pertinent parts of which were sent to the petitioners on January 21, 1998.

9. On April 4, 1998, the petitioners sent additional information to the Commission, and on April 27 of that year the Commission transmitted the pertinent portions to the Honduran State. On August 13, 1998, the State requested translations of said documents. The petitioners again sent additional information in May 1999. In November 2000, the IACHR requested information from the petitioners on specific aspects, part of which was provided in December 2000. The Commission reiterated its request for information on December 22, 2000, without the petitioners sending their reply.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

10. According to the petition, in 1988, the Journalists' Association of Honduras (CPH) revoked Mr. Galeas' license to work as a journalist due to opinions aired by him against the government. On March 12, 1989, that institution, based on the provisions contained in Article 293 of the Criminal Code of the Republic of Honduras, filed a criminal suit against Mr. Galeas for the illegal exercise of journalism, specifically, for the "crime of illegal assumption of powers and professional title to the detriment of the Journalists' Association of Honduras". On December 27, 1989, Mr. Galeas was released on bail pending trial. The petitioners say that in November 1989, Mr. Galeas divulged information about an alleged order to murder three political leaders from a high-ranking military official, as a result of which he allegedly began to receive threats that were not properly investigated by the State.

11. On June 28, 1990, Radio Tegucigalpa suspended Mr. Galeas from his duties as "advertising agent and news reader", citing as its reason that he was prohibited by the CPH from exercising such functions because he was the subject of a criminal prosecution in the courts. By virtue of the foregoing Mr. Galeas purportedly was unable to find another job with any mass media outlet in Honduras. Mr. Galeas alleged that on February 17, 1991, as a result of a warning from Gilberto Goldstein, a presidential secretary and personal friend of his, he had to leave the country bound for Venezuela because he feared for his life and his liberty.

12. The petitioners say that Mr. Galeas worked as a journalist at Canal 8 de Venezolana de Televisión and on December 3, 1991, was appointed correspondent for Brújula Internacional in Kuwait. In view of the fact that this appointment required that he obtain a visa in order to travel to the United States, Mr. Galeas allegedly pursued the necessary procedure at the said country's consulate in Venezuela, which refused him a visa because he was not a Venezuelan citizen. On the instructions of his employer, Mr. Galeas was apparently compelled to return to Honduras in order to acquire said visa. Once in Honduras, in February 1992, Mr. Galeas was allegedly again warned by a Honduran congressman that he should leave the country, otherwise the CPH would reactivate his case. Mr. Galeas traveled to the United States, where he later applied for political asylum, which he was granted on August 2, 1994.

13. The petitioners submit that by requiring Mr. Galeas' compulsory membership of the CPH, and as a result of the failure to investigate and avert the threats to his personal security, the following rights have been violated to his detriment: right to freedom of expression and not to be censored for his political opinions (Article 13); right to personal security (Article 7); right to a fair trial (Article 8(1)); right to judicial protection (Article 25); right to equal protection (Article 24); as well as the duty to investigate arising from the obligation to ensure rights provided in Article 1(1) of the American Convention.

B. Position of the State

14. The Honduran State alleged that domestic remedies were not exhausted and, therefore, that the requirements contained in Article 46 have not been met, since the alleged victim does not allegedly have reasonable motives to fear for his personal security or freedom and, accordingly, had the possibility to exhaust domestic remedies.

15. As to merits of the matter, the State held that the proceeding initiated against Mr. Galeas had been in accordance with the laws in force in Honduras, inter alia, the Constitution and the Law on Compulsory Membership of Professional Associations [Ley de Colegiación Profesional Obligatoria], under which the exercise of the profession of journalism is supposedly subject to certain requirements. Further, the State presented several items of written evidence that attested that Mr. Galeas was not a registered member of the CPH, or of the Honduran Press Association, and that he had never been a student at the Journalism School of the Universidad Nacional Autónoma de Honduras. By the same token, the Honduran State argued that the body that caused the alleged violation of Mr. Galeas' rights is not a State institution but one of the private professional entities that exist in Honduras, and, accordingly it would not have been the State of Honduras that instituted a legal action against Mr. Galeas.

16. Further, the State said that there was no evidence of persecution of Mr. Galeas and that the time elapsed since the suit brought by the CPH "leads us to infer that the statute of limitations has already run on the legal or court proceedings,"[FN1] which would indicate that that there is no reason for the petitioner to fear that he might be imprisoned for his past behavior. For this reason, the State alleged that the petition before the IACHR was filed "extemporaneously and late." [FN2] The State alleged that the petitioner's fear was apparently founded on his own irregular conduct, and presented to the Commission written evidence that Mr. Galeas had been arrested for larceny in 1983, because he allegedly collected undue payments in the name of the radio station for which he worked at the time..

[FN1] See official letter N°183-DDHN of December 18, 1997, sent to the IACHR the Ministry of Foreign Affairs of the Republic of Honduras.

[FN2] See official letter N°183-DDHN of December 18, 1997, sent to the IACHR the Ministry of Foreign Affairs of the Republic of Honduras, p.4.

IV. ANALYSIS

A. Competence *ratione personae*, *ratione materiae*, *ratione temporis* and *ratione loci* of the Inter-American Commission

17. Under Article 44 of the American Convention and 23 of the Rules of Procedure, the petitioners, as a legally recognized nongovernmental entity, may lodge petitions with the IACHR, concerning alleged violations of the American Convention (procedural standing). As to the State, the Commission finds that Honduras is a state party to the American Convention, having ratified it on September 8, 1977. The petition cites as the alleged victim Mr. Santos Hernán Galeas González, a natural person on whose behalf Honduras undertook to respect and ensure the rights enshrined in the Convention. Accordingly, the Commission has *ratione personae* competence to examine the petition.

18. The petition contains allegations, which, if proven, could constitute violations of human rights protected in the American Convention. Therefore, the Commission has *ratione materiae* competence to take up the petition.

19. By the same token, the Commission has *ratione temporis* competence, inasmuch as the events alleged in the petition are purported to have occurred when the duty to respect and ensure the rights recognized in the Convention was in force for the State.

20. Finally, the Commission has *ratione loci* competence to take cognizance of the petition because it describes violations of rights protected in the American Convention that allegedly occurred within the territory of the Honduran State.

B. Admissibility requirements

a. Exhaustion of domestic remedies

21. Non-exhaustion of domestic remedies is not in dispute, since both parties concur that the remedies under domestic law were not used. Accordingly, at issue is whether or not the exceptions contained in Article 46 (b) apply in the instant case.

22. The Honduran State said that Mr. Galeas had access to the judicial remedies designed to find unconstitutional the law that requires compulsory membership of a professional organization for journalists and the internal regulations of the CPH, which were not used by Mr. Galeas. It also mentioned the competent authorities to which he could have turned. Mr. Galeas did not dispute this fact, for which reason the IACHR believes that the latter had no intention of exhausting domestic remedies in that regard. The Inter-American Court has previously held that “[i]t must not be rashly presumed that a State Party to the Convention has failed to comply with its obligation to provide effective domestic remedies.”^[FN3] Based on the foregoing, since the State has shown the existence of said remedies, it is up to the petitioner to prove their ineffectiveness, which did not happen in the instant case.

[FN3] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, para. 60.

23. Nonetheless, the Commission finds that the petitioner submitted substantial arguments to the effect that he was prevented from using the domestic jurisdiction, which were not properly investigated by the Honduran State.

24. In that connection, the petitioners denounced wiretapping and threats of death and imprisonment by agents of the State, referring concretely to three threats: the first by Colonel Amaya, a member of the Armed Forces of Honduras; later Mr. Galeas supposedly received a call from Mr. Gilberto Goldstein, First Secretary of the then-President of Honduras, who allegedly warned him to leave the country immediately; and the third, on Mr. Galeas’ return to Honduras

in 1992, was purportedly proffered by Mr. Rodolfo Irías Navas, who is said to have issued him similar warnings.

25. The Commission finds that this situation of personal insecurity would have prevented Mr. Galeas from using the judicial mechanisms designed to protect his personal security and physical integrity.

26. The arguments cited enable the Commission to determine that the exception to the requirement of prior exhaustion of domestic remedies contained in Article 46(2)(b) of the Convention applies in the instant case. Article 46(2)(b) provides that:

The provisions of paragraphs 1.a and 1.b of this article shall not be applicable when:

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.

27. Accordingly, the Commission finds that the requirement of prior exhaustion of remedies under domestic law provided in Article 46(2)(b) does not apply in this case.

b. Timeliness of the petition

28. Given that the exception to the requirement of prior exhaustion of domestic remedies applied in this case, the Commission must determine if the petition was lodged in reasonable time as stipulated in Article 32, second paragraph of the Rules of Procedure of the Commission. In this respect, the Commission finds that four years elapsed after the last alleged violation before the petitioners lodged their petition with the IACHR. That is, the last threat was received in February 1992, after which Mr. Galeas decided to move to the United States. In the opinion of the Commission, in the instant case four years does not constitute a reasonable time, since the alleged victim could have filed his complaint at any time following his departure from Honduras. Even if one accepts the petitioner's argument that the date should be calculated from the time asylum in the United States was granted in 1994, the IACHR notes that two more years elapsed before the petition was lodged in 1996, which also exceeds the limits of reasonableness.

29. The Commission considers that the argument of the petitioners that they did not know about the possibility of presenting individual petitions to the IACHR until October 1995 is not valid in this case. Even in the best-case scenario for the petitioner, in which the Commission were to accept his ignorance of the procedure before the IACHR, the record shows that the petition was lodged in May 1996; in other words, seven months after he or his lawyer allegedly learned of the possibility to present individual petitions to the IACHR.

30. Article 32 of the Rules of Procedure of the IACHR provides that:

In those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.

31. Therefore, the Commission finds that the instant petition was lodged outside the time period provided in Article 32 of the Rules of Procedure of the IACHR.

V. CONCLUSIONS

32. Given that the IACHR has determined that the instant petition does not meet the requirement of timely presentation, after the exception to the rule of prior exhaustion of domestic proved applicable, it is not necessary to refer to the other arguments of the parties in connection with Articles 46 and 47 of the American Convention.

33. Accordingly, the Commission concludes that the petition under review does not meet the requirement provided in Article 32(2) of the Rules of Procedure of the Inter-American Commission on Human Rights and is inadmissible in accordance with Article 47(a) of the American Convention.

34. Based on the foregoing factual and legal arguments,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant case inadmissible.
2. To notify the petitioners and the State of this decision.
3. To make public this decision and to include it in its 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 27 day of the month of February in the year 2002. (Signed) Juan Méndez, President; Marta Altolaguirre, First Vice-President; José Zalaquett, Second Vice-President; Commissioners: Robert K. Goldman and Clare K. Roberts.