
December 3, 2014

Ref.: Case No. 12.453
Olga Yolanda Maldonado Ordóñez
Guatemala

Dear Mr. Secretary:

I am pleased to write to you on behalf of the Inter-American Commission on Human Rights to submit to the jurisdiction of the Honorable Inter-American Court of Human Rights Case No. 12.453, *Olga Yolanda Maldonado Ordóñez* in respect of the Republic of Guatemala (hereinafter “the State,” “the Guatemalan State,” or “Guatemala”).

The case involves an administrative proceeding which led to the dismissal of Mrs. Olga Yolanda Maldonado Ordóñez, who was a civil servant in the Office of the Human Rights Ombudsman in Guatemala. The Commission considered that, as this was a disciplinary proceeding, not only were the minimum guarantees established in Article 8.1 of the American Convention applicable, but also the principle of strict legality, the presumption of innocence, and the necessary guarantees for her to exercise her right to defense. The Commission concluded that although the applicable regulatory framework gave the Human Rights Ombudsman the competence to carry out the proceeding, the manner in which notification was made of the supposed grounds for this proceeding against Mrs. Maldonado made it difficult for her to understand its objective. In this regard, she exercised her defense without having the minimum amount of information needed to do so.

Likewise, the Commission concluded that Agreement No. 81-2000 of the Human Rights Ombudsmen, the decision whereby she was dismissed, was issued in breach of the duty to state reasons, the principle of legality, and the principle of the presumption of innocence. Said agreement explained that Mrs. Maldonado was removed from her post because of a “reported situation,” with no investigation conducted of whether or not the victim’s conduct fell within the respective grounds. This fact was recognized by the State of Guatemala before the Commission. Lastly, the Commission concluded that none of the appeals brought by Mrs. Maldonado resulted in a review of the sanction or constituted an effective remedy for the due process violations.

The State ratified the American Convention on Human Rights on May 25, 1978, and accepted the contentious jurisdiction of the Court on March 9, 1987.

Mr. Pablo Saavedra Alessandri, Secretary
Inter-American Court of Human Rights
P.O. Box 6906-1000
San José, Costa Rica

Attachments

The Commission has designated Commissioner James Cavallaro and Executive Secretary Emilio Álvarez Icaza L. as its delegates. Likewise, Elizabeth Abi-Mershed, Deputy Executive Secretary, and Silvia Serrano Guzmán and Erick Acuña Pereda, attorneys of the Executive Secretariat of the IACHR, will serve as legal advisors.

In accordance with Article 35 of the Rules of Procedure of the Inter-American Court, the Commission has attached a copy of the report on the merits, Report No. 42/14, prepared in compliance with Article 50 of the Convention, together with a copy of the complete record of the case before the Inter-American Commission (Appendix I) and the annexes used in the preparation of Report No. 42/14 (Annexes). Said report on the merits was notified to the State of Guatemala in a communication dated September 3, 2014, giving the State two months to report on compliance with the recommendations. The State of Guatemala submitted a brief in which it rejected the conclusions in the merits report and said it would not grant reparations of any type to Mrs. Maldonado.

Accordingly, the Inter-American Commission submits to the jurisdiction of the Court all of the facts and human rights violations described in Report No. 42/14, in view of the need to obtain justice for the victim in the case.

In this connection, the Commission requests that the Court conclude and declare that the State of Guatemala bears international responsibility for violating the right to a fair trial, the principle of legality, and the right to judicial protection, as established in Articles 8.1, 8.2, 9, 9, and 25 of the American Convention on Human Rights, in relation to Article 1.1 of the same instrument, to the detriment of Olga Yolanda Maldonado Ordóñez.

Therefore, the Commission requests that the Court establish the following reparation measures:

1. Provide comprehensive reparations to Mrs. Olga Maldonado for the violations stated in the report. These reparations should include both the material and moral aspect.
2. Eliminate all consequences of the sanction imposed on Mrs. Maldonado, including any disciplinary background information against her.
3. Adopt measures to ensure that this will not recur so that public officials in positions similar to the victim's in the present case are clear about disciplinary procedures and sanctions against them and have effective remedies to address them.

In addition to the need to obtain justice, the Commission underscores that the instant case involves matters of inter-American public order (*ordre public*). Specifically, a resolution of the case could help deepen and clarify the jurisprudence of the Inter-American Court on the matter of guarantees of both legality and due process that are applicable in the context of diverse administrative proceedings, including disciplinary ones. Likewise, the case could help strengthen jurisprudence on the scope of the right to effective judicial protection in these matters.

Because these matters have an important impact on inter-American public order (*ordre public*), pursuant to Article 35.1 (f) of the Rules of Procedure of the Inter-American Court, the Commission would like to offer the following expert testimony:

A witness, whose name will be provided shortly, who will testify on due process guarantees, effective judicial protection, and the principle of legality, in the framework of administrative and disciplinary proceedings. The witness will examine, as appropriate, the jurisprudence of other protection systems and will make reference to comparative constitutional law. Lastly, the witness may refer to the facts of the present case.

The curriculum vitae of the proposed expert will be included in the annexes to the report on the merits, No. 42/14.

The Commission hereby provides the Court with the following information on those who acted as petitioners throughout the proceedings:

[REDACTED]

I would like to take this opportunity to convey my highest regards.

Sincerely yours,

Signed in the original
Elizabeth Abi-Mershed
Deputy Executive Secretary