



## Pensioners of BANDESA v. Guatemala

Report No. 102/09, Petition 1380-06, October 29, 2009; OEA/Ser.L/V/II., Doc. 51, corr. 1, 30 December 2009

**Country:** Guatemala

**Region:** Americas

**Year:** 2009

**Court:** Inter-American Commission on Human Rights Inter-American Commission on Human Rights

**Health Topics:** Health systems and financing

**Human Rights:** Freedom from discrimination, Right to due process/fair trial, Right to family life, Right to health, Right to life, Right to social security

### Facts

This case concerned a petition received by the Inter-American Commission on Human Rights ("IACHR") from the Workers' Pension Plan Association of the Banco Nacional de Desarrollo Agrícola (National Agricultural Development Bank) (BANDESA). The petition was brought on behalf of 179 former BANDESA workers against the Republic of Guatemala. The petitioners alleged that the State of Guatemala incurred responsibility by reason of its delay in adjudicating the legal remedies pursued by the alleged victims in asserting their rights under the BANDESA workers' pension plans.

In 1992, BANDESA established a pension plan for those employed with BANDESA. The plan was made up of contributions made by the employer accrued annually. After 1997, when BANDESA became a mixed capital bank under the new name BANRURAL, this reserve was not made available to the workers as an assurance of funds for its workers' pension plan. As a result, many workers demanded a refund of their contributions. BANDESA-BANRURAL suspended both payments of contributions and withholding of workers' wages to the detriment of the right to social security of all its members. Therefore, the petitioners initiated litigation proceedings against BANRURAL demanding payments of their contributions. BANRURAL delayed litigation of the main case from proceeding, and over six years had transpired since the institution of proceedings without any significant progress in the case. The petitioners thus claimed that the State incurred responsibility for unwarranted delay in administering justice and that domestic remedies could not be exhausted. They argued that it would be impossible to pursue all domestic remedies since such pursuit would lengthen the period in which their "basic health and nutritional requirements" are not being met. The petitioners thus brought this petition to the Commission claiming violation of several treaty provisions including, inter alia, Articles 4 (right to life), 8 (right to a fair trial), 17 (rights of the family), 24 (right to equal protection) and 25 (right to judicial protection) of the American Convention on Human Rights (the "American Convention").

### Decision and Reasoning

The Commission held that the case was admissible with regard to the alleged violations of Articles 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention on Human Rights. The Commission noted their obligation to perform a prima facie evaluation of the petition and determine whether it provides grounds for an "apparent or potential violation" of rights guaranteed by the American Convention. The Commission relied on Article 46(2)(c) of the American Convention to find an exception to Article 46(1)(a), which required the exhaustion of domestic remedies before bringing such a petition. Pursuant to Article 46(2)(c), the Commission held that the ten years which had transpired since the institution of the case was sufficient to constitute an unwarranted delay in rendering a final judgment in the Guatemalan courts under Article 46(2)(c).

Having found the exhaustion of domestic remedies to be no bar to admissibility the Commission also held the complaint admissible with respect to the alleged violations of Articles 21 (right to property) and 26 (progressive development) of the American Convention. In relation to Article 21, the Commission held that if such facts were proven, the withholding from the monthly wages of the alleged victims could constitute a violation of said article. Additionally in relation to Article 26, the Commission found that the right to a pension could adequately come within the scope of said article.

However, the Commission declared the petition inadmissible with respect to the alleged violations of Articles 4, 17 and 24 of the American Convention on Human Rights. The Commission found that the information and facts provided by the parties did not provide sufficient grounds to be characterized as proper violations of said articles.

### **Decision Excerpts**

“The IACHR considers that the facts described and the information provided by the parties do not provide sufficient grounds to be characterized as alleged violations of the right to life, rights of the family, or the right to equal protection, respectively, enshrined in Articles 4, 17, and 24 of the American Convention.” Page 7

“Furthermore, in application of the ‘jura novit curia’ principle, the IACHR notes that the facts described by the petitioners could constitute a violation of Article 26 of the American Convention, since the right to a pension, as an integral part of the right to social security, comes within the scope of that article. In that regard, the Commission notes that acts or omissions by different state entities may have resulted in a significant reduction in the enjoyment of their right to social security, or even the elimination of the pension regime of which the alleged victims were beneficiaries. Therefore, and without prejudicing the merits of the case, the IACHR considers it relevant to include Article 26 of the American Convention in the analysis of the merits of the instant case.” Page 7.

&nbsp;

Copyright © 2015 [www.GlobalHealthRights.org](http://www.GlobalHealthRights.org)