



Observatory on the Protection of Taxpayers' Rights

Below you will find a report prepared by Guzmán Ramírez Arrieta, Senior Associate at *Bergstein Abogados* and reporter of the OPTR Unit for the Inter-American Court.

This report contains a summary of court cases before the Inter-American Court of Human Rights, in which issues regarding the practical protection of taxpayers' rights were discussed and decided in 12 relevant areas, identified by Prof. Dr. Philip Baker and Prof. Dr. Pasquale Pistone at the 2015 IFA Congress on "*The Practical Protection of Taxpayers' Fundamental Rights*".

The following document contains references made to the rulings issued by OAS human rights bodies (namely, the Inter-American Court and Commission) on the protection of taxpayers' rights. Prepared by Guzmán Ramírez, senior associate of Bergstein Abogados, Montevideo, Uruguay.

CASES FILED IN THE FRAMEWORK OF THE INTER-AMERICAN SYSTEM FOR THE PROTECTION OF HUMAN RIGHTS IN TAX MATTERS

Articles of the American Convention on Human Rights	Case	Date	Facts	Decision	Comments
<p>✓ 8 (“<i>Right to a Fair Trial</i>”)</p> <p>✓ 21 (“<i>Right to Property</i>”)</p> <p>✓ 25 (“<i>Right to Judicial Protection</i>”)</p> <p>✓ 46 -- Requirement of exhaustion of domestic remedies</p>	<p>Elena Nuques and Others v. Ecuador</p>	<p>June 1, 2019</p>	<p>Mr. Anselmo Nuques was the owner of a sugar mill and five (5) farms located in Ecuador.</p> <p>In 1967, local tax authority issued recovery orders on the sugar mill for tax on sugar production and income tax. The collection proceeding led to the seizure of the sugar mill and the farms.</p> <p>Thirty (30) years later, Mr. Nuques’ heirs filed a suit before Ecuadorian courts, seeking the nullity of the proceeding that led to the seizure.</p> <p>In 1999, the Supreme Court of Justice accepted such suit. As a consequence of this</p>	<p><u>Admissibility Report No. 87/19, Inter-American Commission on Human Rights</u></p> <p>The Inter-American Commission on Human Rights found the claim admissible. In its opinion, the alleged non-compliance of the judgments on damages and the ongoing denial of justice could characterize possible violations of Articles 8 (right to a fair trial), 21 (right to property) and 25 (right to judicial protection) of the American Convention.</p> <p>In the words of the Commission, “<i>the alleged victims filed the available remedies at the domestic level to ensure compliance</i></p>	<p>The Ecuadorian State presented two (2) interesting arguments in order to defend the inadmissibility of the claim. However, such arguments would not have been sufficient to convince the Commission.</p> <p><u>(i) Lack of competence <i>ratione temporis</i>.</u></p> <p>The conduct of the tax authority affecting the right to property would have taken place in the late 1960s and early 1970s. The American Convention on Human Rights -however- entered into force for Ecuador in 1977. As a result, Ecuadorian State argued that the events alleged by the petitioners would have</p>

			<p>decision, in 2000 the heirs requested the restitution of the mill and the farms, in accordance with the Ecuadorian Civil Code, which provides that “<i>the effects of nullity involve leaving matters in status quo ante</i>”.</p> <p>Tax authority stated that it was impossible to comply with the requirement, because there were only vestiges of the sugar mill, and the farms were now in the hands of third parties.</p> <p>Faced with this situation, the heirs requested the payment of damages. In 2003, the Supreme Court ruled that there should be damages compensation. An expert appointed in the case established that the compensation would amount to approximately USD 43.3 millions.</p> <p>In 2006, the Supreme Court confirmed that lower courts must comply with its judgment of 2003. These courts would have failed to comply with such</p>	<p><i>with the judgments, and that remedies were ineffective”.</i></p>	<p>fallen outside the scope of the obligations assumed under the Convention.</p> <p><u>(ii) Principle of legal certainty.</u></p> <p>The Ecuadorian State also argued that the petitioners would not be the only heirs of Mr. Nuques, and any outcome of the proceedings before The Commission could affect the rights of the remaining heirs, undermining the principle of legal certainty.</p> <p>Unfortunately, the Inter-American Commission on Human Rights did not provide any further details on the analysis of such arguments and the reasons to reject them.</p> <p>However, its report did highlight one (1) significant issue regarding the rule on the exhaustion of domestic remedies provided in Article 46.1.A of the American Convention. Such provision establishes that</p>
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			<p>decision.</p> <p>The tax authority invited the victims to a mediation process, and in 2007 the parties agreed that Mr. Nuques' heirs would receive USD 23 millions as a compensation for the farms and the sugar mill.</p> <p>Faced with the lack of payment, the same heirs demanded the compulsory fulfillment of the mediation agreement that was rejected in September 2010. As a result, in February 2011 the victims filed a claim with the Inter-American Commission on Human Rights (Petition No. 212-11) which sought to redress non-compliance with judgments rendered by the Supreme Court ordering payment of the damages.</p>		<p>the remedies available and effective in the domestic legal system, must be pursued first. That said, the Commission clarified that <i>"the requirement of exhaustion of domestic remedies does not mean that the victims necessarily have an obligation to exhaust all available remedies. Accordingly, if the victim pursues the issue through one (1) of the valid and adequate avenues provided by the domestic legal order and the State had the opportunity to remedy the situation in its jurisdiction, the Commission considers that domestic remedies have been sufficiently exhausted for the purposes of admissibility."</i></p>
<p>✓ Article 68.1 -- <i>Pacta sunt servanda</i></p> <p>✓ Article 67 -- <i>Res judicata</i></p>	Ana Teresa Yarce and Others v. Colombia	November 22, 2019	In 2016, the Inter-American Court of Human Rights issued its judgment on merits in this case.	<p><u>Order on Monitoring with Compliance of Judgment, Inter-American Court of Human Rights</u></p> <p>The Inter-American Court</p>	<p>This ruling of the Court highlights an important issue.</p> <p>States cannot invoke provisions of</p>

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