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News from the Inter-American System

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NEWS FROM THE INTER-AMERICAN SYSTEM

by *Ismene Zarifis**

Inter-American Commission on Human Rights: New Rules of Procedure

On May 1, 2001, the new Rules of Procedure of the Inter-American Commission on Human Rights (Commission) entered into force. The new rules comprise the most important instrument governing the admissibility of petitions to the Commission alleging human rights violations in the Americas. One of the principal objectives behind the drafting of the new rules was to achieve greater transparency and judicial certainty in the petition process.

The new procedure has separated the admissibility and merits phases of the Commission's petition process and has modified the practice of transferring cases to the Inter-American Court of Human Rights (Court). Changed provisions regarding the Commission's follow-up procedure reserve a special supervisory role for the Commission for ensuring state compliance with the Commission's recommendations. Finally, an effort to diminish duplication has invoked more formal requirements for the Commission's recording of testimony and gathering of evidence in a form that the Court can use for its proceedings.

Presentation of Petitions

Article 23 (Presentation of Petitions) has changed the procedure to allow a petitioner to claim violations not only of the American Declaration of the Rights and Duties of Man and the Convention, but also of provisions of virtually all regional human rights instruments. For example, Article 23 allows the Commission to accept petitions that allege violations of provisions within the Additional Protocol to the Convention in the Area of Economic, Social and Cultural Rights and the Protocol to the Convention to Abolish the Death Penalty. Likewise, Article 27 (Condition for Considering the Petition), which governs the conditions for considering petitions, requires the petitioner's claims of alleged human rights violations to be among those protected in the applicable documents listed in Article 23.

Admissibility and Merits

The most obvious changes to the Rules of Procedure involve the separation of the admissibility and merits phases of the petition process. Each phase now has an individual decision-making process and dictates its own outcome. A decision on admissibility does not constitute a prejudgment as to the merits of the matter. Accordingly, when the Commission declares a petition inadmissible, it will file the petition and will not consider the merits.

Admissibility

The admissibility phase is now primarily governed by Article 28 (Requirements for the Consideration of Petitions), Article 30 (Admissibility Procedure), and Article 37 (Decision on Admissibility). In the new procedure, Article 31 (Exhaustion of Domestic Remedies), Article 32 (Deadline for the Presentation of Petitions), and Article 33 (Duplication of Procedures) have maintained from the former procedure most of the primary requirements for receiving petitions.

The new guidelines place greater restrictions on the standards for admissibility, which in theory expedite the

review process. Specifically, Article 28 clarifies the requirements for the submission of petitions and reaffirms a steadfast rule for timely compliance. Article 29 (Initial Processing) has restricted the standards for admissibility further by giving the Commission discretion to decide whether to ask the petitioner to fulfill the procedural requirements. The equivalent provision of the old Rules of Procedure required the Commission to notify the petitioner to complete the omitted procedural requirements. This slight but significant change indicates that petitioners may have only one chance to present a petition that adequately satisfies Article 28.

Article 30 sets forth the time line for the consideration of admissibility. The Commission forwards a petition to the state in question immediately after receiving it. The state must respond to the claim and submit information to the Commission within two months after receiving the petition. The Commission does not grant states extensions beyond three months. In making its decision, the Commission considers observations by both parties in deciding whether grounds for the petition exist.

Article 37 requires the Commission to adopt an Admissibility Report, which the Commission publishes in its Annual Report. If the Commission deems the petition admissible, its decision concludes the admissibility phase and initiates the merits phase of the review process if the Commission deems the petition admissible.

Merits

Article 38 (Procedure on the Merits), Article 39 (Presumption), Article 41 (Friendly Settlement), and Article 42 (Decision on the Merits) govern the merits phase. Article 38 allows the petitioners to submit additional observations on the merits within two months from the date when the Commission opens the case. The state in question must respond to the petitioner's observations within two months. This provision is silent on whether extensions to present observations are available to the parties.

If the state fails to respond within the two-month limit, Article 39 presumes that the facts submitted by the petitioner are true as long as other evidence does not lead to a different conclusion. The procedure on the merits allows the petitioner and the state to submit further information, evidence, and arguments. The Commission considers all information and attempts to engage the consenting parties in a friendly settlement of the dispute.

Article 41 has relaxed the requirements for a friendly settlement in that the provision neither requires precision in the positions and allegations of the parties nor demands set dates for collecting evidence or holding hearings. The parties must request to make a friendly settlement within a certain period under Article 38, however. If the friendly settlement is successful, the Commission concludes by publishing a report on the solution reached. If the parties do not reach a friendly settlement, the Commission concludes the merits phase with a decision and publishes a report.

Article 42 requires the Commission to consider the arguments, evidence, and information obtained during the hearings and on-site observations. Once the Commission transmits the report and its recommendations to the state

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party, the state must report on the measures it adopts to comply with the Commission's recommendations within a set time. Under Article 43 (Report on the Merits), the petitioner may request the Commission to transfer the case to the Court, in which case the Commission states its position, submits evidence, and presents claims for reparations pursuant to Article 44 (Referral of the Case to the Court).

Case Transfer to the Court

Article 44 sets forth another significant amendment in the Rules of Procedure by creating a presumption in favor of sending cases to the Court. In contrast to the equivalent provision in the former system, Article 44 allows for the automatic referral of cases to the Court unless there is a "reasoned decision by an absolute majority of the members of the Commission to the contrary." Under the old procedure, the equivalent was based on a presumption of producing a final report with non-binding recommendations. This change is expected to affect significantly states' compliance with the Convention because the Court is now expected to deliver more judgments than it did in the past. Until the adoption of the new procedure, the Commission referred an average of four to five cases to the Court each year. This change implies that the Court will need more resources to handle many more cases annually. Although all of the member states supported this reform, its effect could be problematic in light of the fact that the Commission lacks sufficient financial contributions from the member states.

Other Provisions: Hearings and Follow-Up

Chapter VI of the new Rules of Procedure governs hearings before the Commission. The requirements of the provisions in Chapter VI are more rigorous than those of the old procedure and give the Commission a stronger role as the fact-finder in the process. The requirements, such as rigid deadlines and the level of specificity required from witness testimonies, place greater emphasis on obtaining forms of evidence that can be submitted to the Court for examination. The Commission implemented these changes to avoid duplicating the efforts of the Commission and the Court in gathering evidence.

Article 46 (Follow-Up) is a new provision that grants the Commission a supervisory role in regulating state compliance with the Commission's recommendations. The Commission may recommend suitable follow-up measures, such as requesting further information from the parties and holding hearings. The Commission must also report on the progress of state compliance with its recommendations. This procedure differs from the former system, which provided no formal supervision after the Commission completed the merits report and the friendly settlement.

Inter-American Court of Human Rights: New Rules of Procedure

The new Rules of Procedure of the Court entered into force on June 1, 2001. The most significant modification in the new procedure pertains to Article 23 (Participation of the Alleged Victims), which allows the individual petitioner or alleged victim autonomously to submit requests, arguments, and evidence throughout the proceeding. Article 23 differs from the equivalent provision of the former procedure, which allowed victims to have independent representation only during the reparations stage of the Court proceedings. This significant change in procedure allows the individual to participate actively on his or her behalf. This

form of personal representation is based on the principle that the individual is in the best position to represent his or her interests. This provision is particularly important in clarifying the positions of the Commission and the individual petitioner.

Historically, the Commission fulfilled a dual role of neutral fact-finder and claimant in the process. Now the Commission may represent itself as an intergovernmental human rights body. The Court has yet to deliver a decision under the new Rules of Procedure, but it might be possible that the Commission will present claims separately from the individual, which the Court will need to address through the decision-making process.

In allowing alleged victims to present evidence directly to the Court, Article 23 requires the individual and the Commission to comply with the admissibility requirements for submitting evidence to the Court. Specifically, under Article 35 (Notification of the Application), the Court requires individuals to present their evidence and arguments within thirty days from the filing date. The Court may convene a special hearing on the state's preliminary objections pursuant to Article 36 (Preliminary Objections). Article 44 (Procedure for Taking Evidence) provides that the Court may request the parties to provide any evidence within their reach or statement that may be useful to the Court. Although Article 45 (Cost of Evidence) requires the requesting party to cover the costs of producing the evidence it requests, the petitioner is generally responsible for covering the cost of submitting all other items to the Court.

Conclusion

The effects of the new Rules of Procedure of the Commission and Court are still unknown, but it is clear that the amended provisions attempt to create a more transparent and efficient system of accepting and evaluating claims of human rights violations. The change in the Rules of Procedure of the Commission has prompted an increase in the number of petitions that the Commission receives. The lack of resources may pose a risk to the functioning of the Inter-American system, however. In particular, the lack of monetary contributions by the member states could seriously impede the Court from fulfilling its role of deciding human rights cases in the region.

The presumption in favor of sending cases to the Court creates a more proactive role for the Court in the enforcement and respect of human rights in the region. Furthermore, the new provision on follow-up by the Commission allows greater supervision of state compliance with Commission recommendations in merits decisions and friendly settlements. The Commission's more vigilant supervisory role will be extremely important for cases that do not reach the Court. This new procedure will lead to more judgments that require state compliance with their human rights obligations, thereby developing a richer human rights jurisprudence in the Inter-American system. ☉

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