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Updates from the Regional Human Rights Systems

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European Court of Human Rights

The European Court of Human Rights (Court) was established in 1959 by the European Convention for the Protection of Human Rights and Fundamental Freedoms (Convention). The Court enforces the obligations entered into by the Council of Europe's Contracting States and is comprised of a number of judges equal to the number of Contracting States. Any Contracting State or individual may allege violations of the Convention by filing a complaint with the Court. In its decisions the Court acknowledges the Contracting States’ various legal systems.

Anheuser-Busch Inc. v. Portugal

Anheuser-Busch is a large American brewer and Budejovicky Budvar (Budvar) is a brewer incorporated in the Czech Republic. Anheuser-Busch claims to have used the “Budweiser” trademark since 1876 – 19 years before Budvar was established.

On May 19, 1981, Anheuser-Busch applied to the Portuguese National Institute for Industrial Property (NIIP) to register “Budweiser” as its trademark. Prior to the date of this application, Budvar had registered “Budweiser Bier” as an appellation of origin in Czechoslovakia. An appellation of origin operates similarly to a trademark because it certifies the authenticity of a product and reassures the consumer of its quality and conditions of production. Two international agreements that afforded legal protection to appellations of origin, indications of source, trademarks, and industrial designs were in effect prior to Anheuser-Busch’s application with the NIIP: the Paris Convention of 1883 and the Madrid Agreement of 1891.

After a series of failed negotiations between the two parties over the use of the name “Budweiser,” Anheuser-Busch applied to the Lisbon Court of First Instance (Lisbon Court) on November 10, 1989. Anheuser-Busch sought to nullify Budvar’s registration of “Budweiser Bier” as an appellation of origin. The Lisbon Court ruled for Anheuser-Busch and held that the designation did not qualify as an appellation of origin. The Court thus cancelled Budvar’s prior claim to the “Budweiser” trademark under the Paris Convention and the Madrid Agreement, and NIIP registered the trademark to Anheuser-Busch on June 20, 1995.

Portugal responded that the allegation of a violation of Article 1 of Protocol No. 1 was irrelevant because no legally defensible property interest had ever arisen in Anheuser-Busch’s trademark registration application. Portugal contended that Portuguese legal procedures for trademark registration significantly increased the likelihood of a rejection upon a third party’s successful objection to the registration. Portugal argued that NIIP legitimately denied registration of the “Budweiser” trademark to Anheuser-Busch because of Budvar’s successful third-party objection based on the protection accorded to Budvar for its appellation of origin “Budweiser Bier.” Thus, Anheuser-Busch never had a legitimate expectation that the property interest in the trademark registration was its “possession” under Article 1 of Protocol No. 1.

In a Chamber hearing, the Court ruled in favor of Portugal and Budvar by extension. The Court analyzed whether a legally cognizable property interest — a “possession” as contemplated by Article 1 of Protocol No. 1 — arose at the time Anheuser-Busch submitted its application for registration of the “Budweiser” trademark with NIIP on May 19, 1981. The Court also considered whether the Convention recognized the “right of priority” as a property right to the trademark obtained upon Anheuser-Busch’s filing with NIIP. As the Court noted, trademark application procedures in most Contracting States generally state that a retrospective “right of
priority” to a trademark arises on the date an application for its registration is filed. The filing grants the holder a legally actionable interest against the use of that trademark by third parties while the application is pending, on the condition that the trademark registration is ultimately accepted.

The Court concluded that Anheuser-Busch failed to acquire any such “right of priority” because “Budweiser” was never registered in Anheuser-Busch’s name. The Court found that although a financial interest in the trademark may have arisen while the application was pending with NIIP, the company’s property interest was not strong enough to trigger the protections afforded to possessions under Article 1 of Protocol No. 1. Anheuser-Busch’s application to register its trademark in Portugal created a conditional right to a future property interest, but that right was insufficient to invoke the protections afforded under the Convention. The Court reasoned that a trademark would only become a possession in terms of the Convention after its final registration in the state. The Court therefore held that Article 1 of Protocol No. 1 did not apply to the case by a vote of five-to-two.

The two dissenting judges focused on the Lisbon Court’s decision to revoke NIIP’s original registration of the “Budweiser” trademark to Anheuser-Busch. They argued that Anheuser-Busch’s application of registration with NIIP conferred a right of priority over subsequent applications. They further noted that Anheuser-Busch had already filed its application of registration by the time Portugal and Czechoslovakia entered into the 1986 Agreement. Therefore, the 1986 Agreement should not have been applied to the decision on Anheuser-Busch’s trademark application.

Under Article 43 of the Convention, any party to a case may request an appeal to a Grand Chamber within three months of a Chamber judgment. A Grand Chamber accepts such requests if, after review by a panel of five judges, the request raises a serious issue of general importance or concerns the interpretation or application of the Convention. Because Anheuser-Busch’s loss of its renowned trademark in Portugal meets both of these criteria, the Court has accepted its request of appeal to the Grand Chamber. The Court likely will use the Grand Chamber hearing as an opportunity to expand on the Chamber’s holding that a company only acquires a “legally-protected expectation” of an interest in a trademark after a government has approved the registration of the mark.

**INTER-AMERICAN SYSTEM**

The Inter-American Human Rights System was created with the adoption of the American Declaration of the Rights and Duties of Man (Declaration) in 1948. In 1959 the Inter-American Commission on Human Rights (Commission) was established as an independent organ of the Organization of American States (OAS), and it held its first session one year later. In 1969 the American Convention on Human Rights (Convention) was adopted. The Convention further defined the role of the Commission and created the Inter-American Court of Human Rights (Inter-American Court). According to the Convention, once the Commission determines a case is admissible and meritorious it will make recommendations and, in some cases, present the case to the Inter-American Court for adjudication. The Inter-American Court hears these cases and determines liability under relevant regional treaties and agreements. It subsequently awards damages and other reparations to victims of human rights violations.

**Acevedo Jaramillo et. al. v. Peru and López Álvarez v. Honduras**, both of which address state infringement on the right to due process, demonstrate the most common types of violations that occur within the Inter-American system. Along with terrorism, the most frequent claim arising before the Inter-American system against Peru involves the right to judicial protection. A pressing issue in Central America involves the rights of imprisoned individuals. In countries such as Honduras, arbitrary detentions and inhumane penitentiary conditions are among the most prevalent violations.

**ACEVEDO JARAMILLO ET. AL. V. PERU**

The Commission filed a complaint before the Court to decide whether Peru violated Article 25 of the Convention (Right to Judicial Protection). The complaint alleged Peru’s failure to execute rulings that ordered the Municipality of the City of Lima to rehire and compensate former municipality employees it had fired arbitrarily. The Municipality of Lima, the government of the Peruvian capital, had fired workers because they were members of the Sindicato de Trabajadores Municipales de Lima, a union that was declared illegal at the time of the firings. The government had also justified the layoffs as part of a necessary liquidation of a company that provided cleaning services to the City of Lima.

On January 13, 1999, the workers’ representatives filed the complaint before the Commission. Between September 1999 and June 2000, the state and the petitioners engaged in a period of negotiations that paved the way to a friendly settlement. In November 2000 the state and the petitioners informed the Commission that a friendly settlement had been reached. On April 6, 2001, however, Peru created a special commission to suggest alternatives to the friendly settlement. Almost one month later, Peru decided to halt the study of these alternatives and asked the Commission to solve the dispute. As a result of Peru’s request, the Commission approved Report No. 66/02, which concluded that Peru had violated Article 25. In response to the Commission’s findings, Peru assumed its responsibility for the violation of Article 25(2)(c) — the duty of the state to ensure that authorities enforce judicial remedies — and expressed its desire to initiate a new period of negotiations with the workers. After the Commission granted two extensions to Peru, the state failed to present information regarding its compliance with the recommendations set forth by Report No. 66/02. As a result, on June 23, 2003, the Commission presented the case to the Court.

During the Court’s proceedings, Peru filed two preliminary exceptions: (1) the non-legitimacy of the complainants and (2) the non-exhaustion of domestic resources. Peru’s first preliminary exception alleged that the petitioners could not file a complaint before the Court and that an association such as a labor union could not file a complaint before the Court. Because Peru failed to clearly explain this claim, the Court rejected it and reiterated that any person or group of people “recognized in one or more member states of the Organization, may...
lodge petitions’ under Article 44 of the Convention. In response to the second preliminary exception, the Court stated that the petitioners had exhausted their domestic remedies and that Peru had previously admitted its international responsibility for the violation of Article 25(2)(c). In addition, the Court determined that Peru had never raised the issue of exhaustion of remedies when the case was at the Commission. The Court therefore rejected the state’s preliminary objection based on the failure to exhaust domestic remedies.

Peru further alleged that its admission of responsibility for the violation of Article 25 was invalid because it was a political mechanism to discredit the then mayor of Lima. The Court also rejected this argument and established that the principle of estoppel assumes that a state that has adopted a position that has jurisdictional effects cannot later change that position. Hence, every act of recognition made by Peru created a condition of estoppel and Peru could not retract its admission of responsibility.

The Court also noted that the state must provide an effective judicial recourse and that compliance with a court’s ruling is necessary for its full effectiveness. Thus, the Court stated that Peru failed to comply with the domestic court’s rulings to rehire and compensate the former employees of the Municipality of Lima. The Court reminded Peru that its duty includes the full execution of the provisions of its rulings and that the execution of a sentence is an integral part of the right to judicial protection.

The Court determined that Peru had violated Article 25 because the workers had not received their court-ordered compensation and damages. The Court considered that these violations were particularly grave because many years had passed since the domestic courts issued these rulings and the workers had not returned to their jobs. The Court ordered Peru to compensate the victims for lost income, to reintegrate them into the work force, and to pay for their attorneys’ fees.

**LOPEZ ALVAREZ V. HONDURAS**

On July 7, 2003, the Commission filed a complaint before the Court alleging that Honduras violated Articles 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), 25 (Right to Judicial Protection) and 24 (Right to Equal Protection) in relation to the obligations established under Articles 2 (Duty to Domestic Legal Effects) and 1.1 (Obligation to Respect Rights) of the Convention. The Center for Justice and International Law and The Fraternal Black Honduran Organization (Organización Fraternal Negra Hondureña) also alleged violations of Articles 13 (Right to Freedom of Thought and Expression), 16 (Right to Freedom of Association), and 17 (Rights of the Family). The complaint argued that the petitioner, Mr. Alfredo López Álvarez, was illegally detained on April 27, 1997, for allegedly possessing and trafficking illegal drugs. The complaint also maintained that although appeals judges had ruled in favor of the petitioner on January 13, 2003, the petitioner continued to be unjustifiably detained until August 26, 2003.

The petitioner, an indigenous Garífuna leader, had been under investigation for possession of illegal drugs and for land ownership issues related to his leadership role. At the Department of Criminal Investigation (DIC), agents coerced López Álvarez to identify and claim ownership over two packages that contained illegal drugs. These agents did not permit him to communicate with counsel or his relatives. Only after five days of detention did he have access to a lawyer. Agents of the DIC tortured López Álvarez throughout his detention and the conditions of his detention were inhumane. He was placed in a room of 300 individuals equipped to hold only 40, he did not receive medical attention, and he was not allowed to speak in his native Garífuna language. His conditions worsened when he was later placed in a different center that was more constricted.

According to Honduran law, a judicial order is required to detain an individual. In the event that an order cannot be obtained before such detention, an order must be instituted immediately thereafter. Additionally, Article 7.3 of the Convention prohibits legal detention or incarceration that in practice is unreasonable. The detention may become unreasonable and consequently illegal if it violates the human rights of the detained individual.

The Court further pointed out that a person who has been illegally detained is in an aggravated situation of vulnerability because their physical integrity and dignity are at risk. In accordance with the international organs that protect human rights, the Court established that detainees have the right to conditions that are compatible with their personal dignity and personal integrity.

The Court also ruled that Honduras failed to protect the petitioner’s rights under Article 5 of the Convention. López Álvarez was held at an overcrowded jail, had to sleep on the floor, did not receive adequate nutrition or potable water, and lived in unhygienic conditions. Honduras agreed with this description and admitted that the conditions in jails around the country “are not the best ones.” Further, the petitioner was placed in detention facilities that made no distinction between the guilty and indicted, which increased the risk of his being attacked. The Court ruled that Honduras also failed to protect the petitioner’s family’s Article 5 rights because they lost shelter and suffered emotionally from the injustice the petitioner endured.

Article 8 and Article 25 are often paired because they guarantee the right to due process. Honduras failed to provide judicial protections to the petitioner in two ways: (1) by failing to give him the opportunity to have immediate assistance of counsel; and (2) by failing to free him after two courts of appeals ruled in his favor. The Court determined that Honduras did not have a justifiable reason to commit either of these two violations and that although the petitioner was eventually granted the opportunity to have counsel, Honduras breached the duties of the Convention by retaining the petitioner long after two appeals judges had ruled in his favor. The Court emphasized the importance that judicial guarantees must be a complete process where an individual has access to the courts and can later receive appropriate compensation and judgment based on the courts’ rulings.

Finally, the petitioner alleged that Honduras violated the petitioner’s right to freedom of self-expression and non-discrimi-
The Court determined that Honduras violated the rights of López Álvarez, his partner, and other relatives for the pain they endured during his prolonged detention. Because of these violations, Honduras must pay for the loss and detriment caused by the petitioner’s detention, including attorneys’ fees. The Court further ordered that Honduras investigate the events of this case, publish the ruling, and improve the physical, sanitary, and alimentary conditions of jails within the country.

Although Acevedo Jaramillo et al. v. Peru and López Álvarez v. Honduras present two different scenarios with two different sets of violations, both emphasize the importance of judicial guarantees within the Inter-American system. In Acevedo Jaramillo, the Court found that although workers were given access to the courts and the courts ruled in their favor, Peru had failed to fully comply with its duty to fulfill these rulings. The Court noted the same problem in López Álvarez because Honduras failed to immediately comply with the court’s ruling to free an unjustifiably detained individual. Judicial protection is a two-stage process: (1) the individual must have access to a competent court, and (2) the state must comply with the competent court’s rulings. Peru and Honduras stopped at the first stage, and as the Court noted, their duty was not complete until they fulfilled the second.

ENDNOTES: Privatization of Corrections continued from page 16

31 Jim Hughes and Chris Frates, Denver Post, “Guards’ training at facility faulted” (July 22, 2004).
33 Parenti, “Privatized Problems” at 36.
34 Id. at 33.
36 “[T]here were 49 percent more assaults on guards per capita and 65 percent more assaults on other inmates in privately run prisons than in government-operated prisons nationwide.” Fox Butterfield, N.Y. Times, “Justice Dept. Shows Trouble in Private U.S. Jails Preceded Job Fixing Iraq?” (June 6, 2004) at 18. See Parenti, “Privatized Problems” at 18, 33-34.
39 G.A. Res. 169 at 186.
40 “All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.” G.A. Res. 111 at 200.
42 GA Res. 169 at 186.
43 Corrections USA, Negligence Alleged at 47.
44 Id. at 46.
47 Alex Friedman, “Juvenile Crime Pays — But at What Cost?” in Coyle, Campbell, and Neufeld, Capitalist Punishment at 53.
48 ICCPR at art. 10.
52 Id. at 61.
56 Friedman, “Juvenile Crime Pays” at 52-53.
59 Id. at § 27.
60 Id. at § 28.