Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 14/97; Case 11.381
Title/Style of Cause:	Milton Garcia Fajardo v. Nicaragua
Doc. Type:	Decision
Decided by:	Chairman: Ambassador John Donaldson; First Vice Chairman: Dr. Carlos Manuel Ayala Corao; Second Vice Chairman: Professor Robert Kogod Goldman Members: Ambassador Alvaro Tirado Mejia, Dr. Oscar Lujan Fappiano, Dean Claudio Grossman, Dr. Jean Joseph Exume.
Dated:	12 March 1997
Citation:	Garcia Fajardo v. Nicaragua, Case 11.381, Inter-Am. C.H.R., Report No. 14/97, OEA/Ser.L/V/II.98, doc. 6 rev. (1997)

I. SUMMARY

1. In 1993, the employees of the Nicaraguan Customs Service conducted a strike which was declared illegal. The strikers were dismissed from their jobs, even though several court rulings after the strike ordered that they be given their jobs back. One year later, the Supreme Court of Justice also issued, in response to an appeals proceeding, a ruling related to events in 1992 involving other workers. This ruling showed, according to the petitioners, that there was an obvious error of law which has left the 142 victims completely defenseless and constitutes a serious violation of the their human rights. This is particularly true of the right to a fair trial, freedom of association, the right to compensation for court error, and the right to judicial protection under the American Convention on Human Rights.

II. BACKGROUND

a. The events

2. According to the description of events contained in the complaint, in May of 1993, the customs service workers went on strike after trying unsuccessfully to negotiate a series of requests with the Ministry of Labor. The demands were for, among others, nominal reclassification of the specific and common positions in the General Directorate of Customs, job stability, 20% indexing of wages, pegged to devaluation, and others.

3. Through the Ministry of Labor, the State of Nicaragua resolved, on May 27, 1993, to declare the workers' strike illegal. The State charged that Article 227 of the Labor Code did not extend the right to strike to public or social service workers.

4. On June 7, 1993, the customs service workers filed an appeal against the Ministry of Labor's declaration of illegal strike.

5. On June 9 and 10, 1993, serious confrontations broke out between the workers and the national police force. The workers were hit and the police used tear gas, clubs and firearms against them. Almost 50 workers were arrested and 30 were accused of crimes. These persons were later cleared of the charges against them by the justice system.

6. On June 24, 1993, the Appeals Court issued a ruling suspending the effects of the Ministry of Labor's resolution. The implication of this was that the workers should be allowed to return to their positions, and that all the dismissals that the custom service had initiated arbitrarily should be suspended. Despite this, the customs authorities still dismissed 142 employees, most of whom were local labor leaders. In addition, the Director General of Labor issued a notification on July 7, 1993, ordering that the dismissed workers be rehired, along with the employees who had been arbitrarily accused of crimes. Later on, the Supreme Court of Justice itself issued an official court order calling for compliance with the Appeals Court ruling. None of these court orders was carried out.

7. In addition, even though the Rights Protection Law gives a term of 90 days to resolve an appeal, the Supreme Court of Justice issued ruling No. 44-94 one year after this law was invoked, that is, on June 12, 1994, confirming the Ministry of Labor's ruling with respect to the illegality of the strike. The reasons that the judges gave for their decision were the events of February 1992, that is, events that took place one year before the customs workers' strike. They argued that the workers had put obstacles on the landing field, which had occurred in the case of the AERONICA employees.

8. As a consequence of that court error and the arbitrary actions of the administrative authorities, 142 employees were dismissed. Depending on these persons are 600 others, more than half of whom are children.

b. Alleged violations

9. The claimants say that Articles 8 (right to a fair trial), 10 (right to compensation for judicial error), 16 (freedom of association) and 25 (right to judicial protection), embodied in the American Convention on Human Rights were violated by the State of Nicaragua.

III. PROCEEDINGS WITH THE COMMISSION

10. On June 7, 1994, the Inter-American Commission on Human Rights (hereinafter called the Commission), received the complaint relating to the 142 customs workers of Nicaragua. The complaint was amended by addition on September 13 of the same year by including the names of each of these persons. On September 21, 1994, the Commission entered the case of Milton García Fajardo and others as No. 11.381, and transmitted to the State of Nicaragua the pertinent parts of the petition. The Commission asked the State to furnish information about the material events of that complaint within a term of ninety days. It further asked for any evidence that

would enable it to determine whether all the remedies under domestic law had been exhausted in this case.

11. The State of Nicaragua responded on October 27, 1994, within the aforementioned term. In its letter, the State requested the Commission to declare case 11.381 inadmissible on the grounds of Articles 47(d) of the Convention and 39(b) of the Commission's regulations since the case was pending settlement under another international government organization. The State further stated that the Trade Union Freedom Committee of the International Labour Organization (ILO) had taken up the case, as No. 1719, dated June 9, 1993, pursuant to a claim originally filed by the Sandinista Workers Central and the National Union of Employees.

12. In a letter dated November 7, 1994, the Commission transferred to the petitioners the pertinent parts of the initial response from the State and gave the petitioners a term of 45 days to forward their own observations.

13. On December 21, 1994, the petitioners submitted their observations to the State's response to the Commission. Their observations are summarized as follows:

The grounds for inadmissibility presented by the State do not apply since the violations charged in the two international cases are not the same.

The parties to the two cases are the same, in that in both the Commission and the ILO cases, the defendant is the State of Nicaragua and the victims are the same 142 customs workers. Nevertheless, the charges and the events explained to support them are completely different. The claim with the ILO is for violations of labor rights under national law by the State of Nicaragua and under Conventions Nos. 87 and 98 of the Organization, and the events in that case took place on June 3, 1993. On the other hand, the claim with the Commission stems strictly from the aforementioned ruling No. 44 which violates the human rights recognized in the American Convention on Human Rights. For this reason, the claim with the Commission is not substantially a reproduction of the one pending resolution by the ILO.

According to Article 39, clause 2(a) of its regulations, the Commission may not refrain from taking up and examining a claim when, "the procedure followed before the other organization or agency is one limited to an examination of the general situation on human rights in the State in question and there has been no decision on the specific facts that are the subject of the petition submitted to the Commission, or is one that will not lead to an effective settlement of the violation denounced."

The proceeding established by the ILO does not constitute an international examination or settlement under the meaning of Article 39 and therefore, it would not constitute a reparation of the damage caused for the violation denounced, since it is well known that the ILO only makes recommendations or rulings that entail no legal but only a moral obligation.

14. On February 14, 1995, the Commission transmitted to the State of Nicaragua the content of the observations made by the claimants to the information furnished by the State.

15. On March 24, 1995, the petitioners furnished additional information and reiterated that the Supreme Court had decided in its ruling No. 44, dated June 2, 1994, on the basis of the events that occurred in February, 1992, while the events that were the grounds for the appeal occurred in May and June of 1993, which is when the customs workers went on strike. They also maintained that the Supreme Court of Justice issued its ruling on the appeal one year later, even though the Rights Protection Law mandates a term of 90 days for the decision.

16. In a letter dated March 30, 1995, the State of Nicaragua gave its reply to the formulations made by the petitioners. That reply contends that the customs workers' strike began in May 1993, and the Sandinista Workers Central and the National Union of Employees filed their complaint with the ILO on June 6, 1993. In other words, this was before presentation of the claim to the Inter-American Commission on Human Rights. Likewise, the State points out that the petitioners have recognized that in both cases, before the ILO and the Commission, the parties are the State of Nicaragua and the victims are the 142 customs workers and that the two petitions deal with the same events.

17. The State adds in the same letter that the petitioners pointed out that the ILO Trade Union Freedom Committee confines itself to examining the general status of human rights in the State in question and that the claim with the ILO is for a violation of labor rights by the State of Nicaragua while the claim before the Commission refers to the violation of the human rights recognized by the Convention. It also adds that the petitioners: "in one paragraph express, saying that labor rights are human rights, that only the former (labor rights) can be the subject of a claim with the ILO and in another paragraph, in their attempt to justify the lack of competence of this inter-governmental agency, they contend that the ILO examines the general situation of human rights in Nicaragua."

18. On April 4, 1995, the Commission transferred the contents of the reply prepared by the State of Nicaragua in relation to this case to the petitioners.

19. On May 30, 1995, the Commission transmitted to the State of Nicaragua the pertinent parts of the additional information provided by the claimants.

20. The petitioners submitted their observations in a letter dated June 8, 1995. In this letter they refer to their previous letter of April 30 and request the Commission to rule on the conflict of competencies that has arisen because the ILO Trade Union Freedom Committee and the Inter-American Commission are both hearing case 11.381.

21. On July 12, 1995, the Commission transmitted to the State the contents of the additional information furnished by the claimants.

22. In June and July 1995, many letters were received from the petitioners. These letters describe the financial situations these people are in as a result of their dismissals and reiterate that the grounds for their claim is the judicial error contained in ruling No. 44 of the Supreme Court of Justice. They add that the Director General of Labor issued, on July 6, 1993, an order to restore the workers to their positions but the Director General of Customs has failed to comply with it and they remain unemployed.

23. On July 13, 1995, the Commission transmitted to the State of Nicaragua the pertinent parts of the additional information furnished by the claimants.

24. On October 3, 1995, the State of Nicaragua provided additional information in connection with case No. 11.381. This information contains attachments that deal with the recommendations made to the State of Nicaragua by the Trade Union Freedom Committee pertaining to case No. 1719. The State also attached a letter, dated September 22, 1994, signed by the Nicaraguan Minister of Labor and addressed to the Director of the ILO International Labor Standards Department which took up the case before that international agency. That letter points out the following:

I believe that the Trade Union Freedom Committee is not competent to take up the fairness or lack of it of a resolution by the highest court of justice. Any citizen who submits a matter to a court for a ruling is obligated to respect and abide by the decision that the court issues, especially if this is the highest court of appeal, as is the case before us. Similarly, based on the separation of state powers, the Executive Branch must respect whatever the court authority orders.

25. On October 12, 1995, the Commission transmitted to the petitioners the contents of the information provided by the State.

26. On November 2, 1995, the contents of the additional information provided by the claimants pertaining to the status of workers were remitted to the State. This additional information reiterates that the foundation of their petition relates to the judicial error of ruling No. 44, dated June 2, 1994, handed down by the Supreme Court of Justice.

27. On January 23, 1996, the Commission remitted to the State the contents of the observations made by the claimants to the response given by the State on October 3, 1995. In their observations, the claimants contend: "...that the primary objective of the petition in this case is to make the State of Nicaragua responsible, since one of its agencies, the Supreme Court of Justice, has acted irregularly and caused damages to the workers by performing the function of the court in the name of the State." For this reason, the petitioners reject the argument of the State that this a matter pending under another international agency and they reiterate that the contents of the petition formulated to the ILO deal with the violation of labor rights which occurred prior to issue of ruling No. 44. As a result, the petition filed with the Inter-American Commission, as they have been explaining in their many letters, deals with the error contained in the aforementioned ruling.

28. During the months of March and April 1996, the Commission continued receiving many letters from the workers who explained their financial situations since the date on which they were dismissed. Those letters were remitted on a timely basis to the State of Nicaragua.

IV. CONSIDERATIONS ABOUT ADMISSIBILITY

29. Having seen the antecedents and the processing of the claim mentioned in the preceding paragraphs, the Commission considered the conditions for admissibility of case 11.381 in the following terms:

IV.1. COMPETENCE OF THE COMMISSION

30. The Commission may take up a case submitted to it for consideration whenever prima facie the case meets the formal requirements of admissibility set out in Articles 46 of the Convention and 32 of the Commission's regulations.

31. The competence, ratione loci, empowers the Commission to take up petitions pertaining to violations of human rights that affect an individual subject to the jurisdiction of a state party to the American Convention. Considering that the events described in the claim occurred within the territory of the Republic of Nicaragua, a state party to the Convention since September 25, 1979, the Commission is permitted to take up the case involving Milton García Fajardo and others.

32. In casu, the claim presented by the petitioners refers to events that characterize presumed violations of the following Articles: 8 (right to a fair trial), 16 (freedom of association), 10 (compensation for court error) and 25 (right to judicial protection), all of them contained in the American Convention on Human Rights, to which Nicaragua is a state party. Consequently, the Inter-American Commission is competent, ratione materiae, to take up this case in conformity with Articles 44 and 47(b) of that international instrument.

33. The Commission believes that there are no reasons to allow the allegation that the claim is manifestly incorrectly grounded since the petitioners have shown that the presumed violation is chargeable to a state organ or agent, as established in Article 47(c) of the Convention. The paragraphs pertaining to the examination of exhaustion of domestic remedies point out that the presumed violations would be the result of actions or omissions committed by officials of the Ministry of Labor and of the Judicial Branch of the State of Nicaragua.

34. The Commission believes that the events that are the grounds for the complaint are capable of being resolved through application of the friendly settlement procedure provided for in Article 48(1.f) of the Convention and Article 45 of its regulations. For this reason, the Commission puts itself at the disposal of the parties for the purpose of reaching a friendly settlement of the matter, based on respect for human rights.

IV.2. ALLEGED DUPLICATION OF PROCEEDINGS AT THE INTERNATIONAL LEVEL

35. In the course of processing of this case, the State of Nicaragua has requested that the petition be disallowed on the grounds that two procedures are under way. For this reason, the Commission will examine this requirement for admissibility first of all. For this purpose the positions taken by the two parties shall be explained in the following paragraphs:

a) The State's position

36. The State of Nicaragua has argued in its replies and observations to case 11.381 that the Inter-American Commission should refrain from taking up this case since another proceeding involving it is under way at the international level. According to the State, a petition was submitted to the ILO Trade Union Freedom Committee on June 6, 1993, that is, prior to the claim submitted to the Commission. The claim to the Commission was filed on June 7, 1994. Consequently the State requests the Commission to declare the present case inadmissible, on the grounds of Article 47(d) of the Convention and Article 39(b) of its regulations.

b) The claimants' position

37. The claimants have pointed out that this ground for inadmissibility does not apply in this case since the violations charged in the two international cases are not the same. While it is true that the events in the two cases are the same, the rights that have presumably been violated are different and an ILO decision does not lead to any effective settlement of the violation denounced. This is because the claim to the ILO makes reference to State reprisals and excessive use of force by the police to end the customs workers' strike while the claim before the Inter-American Commission relates to violations of due process in domestic court proceedings, a matter that the ILO Trade Union Freedom Committee did not take up.

Considerations of the Commission regarding the duplication of proceedings with international agencies:

38. It is important to point out that inadmissibility of a petition owing to duplication of proceedings with the Inter-American Commission must be grounded on the following reasons:

A) It is a requirement for admissibility that the subject of the petition or communication not be pending in another international proceeding for settlement (Article 46.1.c of the American Convention). The implication is that the charges must be objectively and subjectively the same for the petition to be declared inadmissible:

- With respect to the similarity of the subject or the aspirations of the claim:

i) The claim before the Commission deals with violations of freedom to association, the right to compensation for judicial error, violation of the right to a fair trial and violation of the right to judicial protection. These are Articles 16, 10, 8 and 25, respectively, of the American Convention on Human Rights.
ii) The claim before the Trade Union Freedom Committee was a complaint filed because of serious violations in the area of trade union freedom which occurred in Nicaragua in June 1993. With respect to the customs workers, the complaint refers to repression of these workers' trade union rights, and the violation of Convention 87 (the Convention on Trade Union Freedom and the Protection of the Right to Organize) and Convention 98 (the Convention on the Right to Organize and Collective Bargaining) of the ILO.

39. In this sense, the provisions of Article 47(d) of the American Convention are clearly involved, in that it provides as follows:

The Commission shall consider inadmissible any petition or communication submitted under Articles 44 or 45 if:

...
d. the petition or communication is substantially the same as one previously studied by the Commission or by another international organization.

40. Article 47(d) refers, then, to an identical claim, by using the words, "substantially the same," filed with different international organizations, a situation which, as pointed out before, was not the case at any time here.

41. In this sense, the United Nations Civil and Political Rights Committee usually admits complaints taken up in other international organizations if the complaint refers to rights recognized by the Pact on Civil and Political Rights, and are not established in the other international instrument that is being applied simultaneously even though the complaints are similar in terms of events.[FN1]

[FN1] In this sense see O'Donnel, "Protección Internacional de los Derechos Humanos," page 450.
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42. Another aspect relates to the claimants being the same in both cases. The victims are the same in the two complaints that have been filed, that is, with the ILO and the Inter-American Commission. The exception is that the complaint with the ILO was filed by the Sandinista Workers Central and Rural Workers Association. This case involves not only the problem of the customs workers but also constitutes a review of the labor status of the Rural Workers Association, Public Administration, the Banco Nacional de Desarrollo, the Education Employees Union (ANDEN), the Manufacturing and Affiliated Workers of the Sandinista Workers Central, as well as a variety of other events of trade union repression in duty free areas and repression of workers filing claims for chemical contamination.

B) The Inter-American Commission will continue hearing the case and lis pendens will not pertain insofar as the case does not involve a decision on the specific events that are the subject of the petition submitted to the Commission and the decision by the international organization does not lead to an effective settlement of this situation in question.

In effect, Article 39.2(a) of the Commission's regulations provides the exceptions for which the Commission is not refrained from taking up the present case:

i) When there has been no decision on the specific facts that are the subject of the petition submitted to the Commission

43. A pertinent point is that the Trade Union Freedom Committee ruled in its report 304 on the recommendations pertaining to the effective violation of the trade union rights of several

trade union groups in Nicaragua as a result of the complaint filed by the Sandinista Workers Central and the Rural Workers Association.

44. Consistent with its competence and the charges raised by those trade union groups, the Committee's recommendation refers to the right to strike and trade union freedom, and at no time deals with arbitrary court rulings and errors, and unjustified delay in the administration of justice, as are alleged in this petition. The ILO decision states:

In this connection, the Committee wishes to recall that the recognition of the principle of trade union freedom for public employees does not necessarily imply the right to strike....In this sense, observing that in this case almost all the trade union leaders and members who were involved in the strike rendered service to different customs agencies of the country--services whose workers can be considered public officers performing authority functions in behalf of the State--the Committee believes that preventing these workers from striking is not contrary to the principles of trade union freedom, particularly considering that the workers in question enjoy compensatory guarantees specifically through negotiations under the reconciliation board.

Nevertheless, the Committee wishes to recall that massive dismissals of strikers imply serious risks of abuses and a serious danger for trade union freedom; the competent authorities should receive appropriate instructions to avoid the risks that discharges such as these can represent for trade union freedom....In these conditions, the Committee makes a call to the government to undertake efforts, for the purpose of encouraging the renewal of harmonious working relations, to undertake the return of the UNE trade union leaders and members discharged from customs work to their work positions. The Committee requests the government to keep it informed in this regard.

45. As can be concluded from the foregoing recommendation, the Trade Union Freedom Committee reviewed the right to strike, as an essential component of trade union freedom, and condemned the discharge of trade union leaders for this reason, but at no time did it refer to the arbitrary actions that were committed in the court proceedings involved in this case such as unjustified delay and the judicial error on which ruling No. 44-94 of the Nicaraguan Supreme Court of Justice was based.

46. The fact that the ILO frames the right of trade union organization as a fundamental right does not mean that the civil and political rights are exhausted in a single right, but rather that the right of trade union organization is a substantial labor right. The allegation of its violation, however, does not bar charges that other civil and political rights were violated in other spheres, as has occurred in the case of Milton García Fajardo and others, which is now before the Commission.

ii) When the decision of the international organization will not lead to an effective settlement of the violation denounced

47. The recommendation made by the Trade Union Freedom Committee does not entail any binding effect, either pecuniary or restorative, or indemnitory, on the Nicaraguan State. Taking into account that the complaint to the ILO encompassed only the violation of trade union

freedom, the recommendation that the ILO body issued does not deal with the violations of due process charged in the complaint filed with the Commission. The Committee would not be competent to rule on this issue since that would involve matters that were not charged in the case before it, which thus would be a violation of the principle of ultra petita.

IV.3. EXHAUSTION OF INTERNAL REMEDIES

48. Article 46 of the Convention requires for admissibility of a complaint that all remedies under domestic law have been exhausted in accordance with the principles of international law.

49. As has been established in connection with the events that were narrated above, the customs employees availed themselves of all court remedies established for the case under domestic law. The resolutions of the Appeals Court of June 24, 1993, and ruling No. 44-94 of the Supreme Court of Justice together exhausted the remedies under domestic Nicaraguan law.

50. Taking into account the nature of this case, which started with a labor conflict, for which domestic legislation provides exhaustion through administrative remedies and then judicial remedies, the Commission shall proceed to outline the remedies exhausted by the claimants.

51. With respect to clause a. of Article 46.2 of the Convention, the Commission will proceed to analyze whether the petitioners exhausted the remedies available to them under domestic legislation in both administrative and court proceedings, taking as its foundation the letters and information contained in the file which were remitted in good time to the State.

A. Exhaustion of the procedure established at the administrative level

52. On March 8, 1993, the customs employees submitted a list of petitions to the Departmental Office of Inspection of the Ministry of Labor in Managua, and initiated, at the same time, a round of negotiations between the Executive Board of the Trade Union and the authorities of the Ministry of Labor.

53. Since the negotiations did not reach an agreement, a request to appoint a strike judge was brought before the Office of the Director of Reconciliation of the Ministry of Labor for consideration. This was done in conformity with the procedure established in Article 305 of the Labor Code. No strike judge was ever appointed, and no board of reconciliation was ever designated. These are the authorities expressly empowered by the Labor Code itself to declare whether or not a strike is legal. As a result, even this phase of the administrative procedure failed to comply with the provisions of the Labor Code.

54. Since the Ministry of Labor did not rule in good time, which leads to the assumption of an infringement of right which exists in all bodies of law under which a private person is entitled to receive a prompt reply from an administrative authority, since otherwise there would be a denial of justice, the petitioners decided to avail themselves of the constitutional precept that embodies the right to strike (Article 83 of the Constitution of Nicaragua). After this, the Ministry of Labor declared that the strike was illegal in a resolution dated May 27, 1993, on the grounds

that public sector workers may not avail themselves of this right, as established in the provisions of the Labor Code.

55. By disagreeing with the contents of the resolution which declared the strike illegal, the workers were exercising a remedy known as "recourse to appeal" through the administrative procedure for the purpose of having the executive reconsider its decision. This appeal process is provided for in Article 68 of the regulations of the Labor Code from which the following conclusion can be drawn:

The right of appeal follows resolutions issued by the authorities of the Ministry of Labor. This recourse must be filed within 24 hours, plus the amount of time required to make notification of the pertinent resolution. After the remedy is filed, the authority that issued the resolution shall immediately bring the activities to the attention of a senior official so that the latter may, within no more than five working days, not extendable, confirm, amend or void the resolution appealed....

56. On June 4, 1993, the Director General of Labor decided to confirm each and every one of the parts of the resolution issued by the Office of the Inspector General of Labor, on May 27, 1993, and consequently declared illegal the strike started by the unions of the General Directorate of Customs.

57. After all the administrative remedies were exhausted, the petitioners proceeded to turn to the courts where they filed an appeal for injunction.

B. Exhaustion of Court remedies

58. The petitioners filed their appeal on June 7, 1993, with the Appeals Court for Civil and Labor Matters of Region III and in conformity with the provisions of Article 31, the Rights Protection Law, Law No. 49, published in the Official Gazette, No. 241, of December 20, 1988. The law stipulates the following:

Article 31: When the appeal remedy duly is filed with the court, it shall be made known to the Office of the Attorney General of Justice, accompanied by a copy of the appeal. Within a term of three days, the court shall decree, de oficio or at the request of party, suspension of the act against which a claim has been made or denial thereof, as appropriate.

59. This Appeals Court decided on June 24, 1993, to suspend the effects of the resolution of the Ministry of Labor and ordered that the workers be restored to their positions. Nevertheless, this ruling was not respected by the authorities which continued to view them as dismissed workers. This led the employees to request the Supreme Court of Justice, on two occasions, August 25, 1993 and September 7, 1993, to issue an executive order for the purpose of carrying out implementation of the ruling issued by the Appeals Court. On September 9, 1993, by means of official order, the high court ruled in favor of enforcing the ruling of the injunction verdict for appeal issued by the Appeals Court.

60. It needs to be asked at this point whether the appeal was the pertinent remedy to view the remedies of domestic law as exhausted. In this order of ideas, it is necessary to mention what the Inter-American Court has understood as adequate remedy:

Article 46.1.a of the Convention refers "to generally recognized principles of international law." These principles do not refer only to the formal existence of such remedies but also to their being adequate and effective, with the exceptions provided for in Article 46.2.

Being adequate means that the function of these remedies, under the internal law system, must be suitable to protect the legal situation infringed upon. In all domestic orders, there are multiple remedies but not all of them apply in all circumstances. If, in a specific case, the remedy is not adequate, obviously it cannot be exhausted. This is indicated by the principle that the rule is aimed at producing an effect and may not be interpreted in the sense that it produces no effect or its result is manifestly absurd or unreasonable....

A remedy must also be effective, that is, capable of producing the result for which it has been conceived.[FN2]

[FN2] Velásquez Rodríguez Judgment, July 29, 1988, Inter-American Court of Human Rights, paragraphs 63, 64 and 66.

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61. The ruling itself of the Supreme Court of Justice of Nicaragua states that there were other remedies that could have been exercised in connection with the resolution of the Ministry of Labor. An example of one is the remedy of unconstitutionality. However, the appeal remedy was the most adequate since its invocation could have brought about the suspension of the effects of the administrative act declaring the strike illegal.

62. As a result, the domestic law provides a remedy which, as brief and summary, makes it possible in an urgent manner to prevent the consummation of a violation. In the case in question, this would have made it impossible for the employees to be dismissed as a result of the validation of that resolution by the senior officers of the Ministry of Labor.

63. Exercise of the appeal remedy in Nicaragua requires exhaustion of all ordinary remedies as established in Article 27.6 of the Rights Protection Law. Ordinary remedies means exhaustion of administrative procedures. As a result, if the judge a quo had considered that the appeals remedy was not admissible because the extremes of Article 27 of the Rights Protection Law had not been complied with, he should have declared it so, but the judge of the Appeals Court resolved to suspend the act because such requirements had been verified.

64. Nevertheless, and even though the appeal is a brief remedy, the basic issue was decided out of the time period, after one year, even though the law gives a term of 90 days for the Supreme Court to decide on the issue.

65. There is no appeal of a decision handed down by the highest court. This clearly shows that the petitioners exhausted both administrative and judicial procedures by following the requirements set out in domestic law.

66. Based on the foregoing explanation, the Commission believes that the claimants have proven that they availed themselves of all the remedies under domestic law provided by the legislation of Nicaragua. As a result, this means that the rule of prior exhaustion of domestic remedies established in Article 46 of the Convention has been complied with.

IV.4. FILING OF THE PETITION WITHIN THE TERM ESTABLISHED IN THE CONVENTION

67. With respect to the amount of time (ratione temporis), as required in the Convention by Article 46.b, in coordination with Article 38 of the regulations of the Commission, the petition must be submitted no later than six months after the date on which the petitioner was notified of the contents of the final decision (res judicata).

68. Ruling No. 44 was issued on June 2, 1994, and the text itself of the verdict ordered that its contents be notified by means of official court order to the Office of the General Director of Labor.

69. On June 7, 1994, the Commission received the contents of the petition, which was expanded on September 13, 1994, at the request of the Commission, for the purpose of making several points more precise. As a result, the petition was presented in good time and in accordance with the provisions established in the Convention and the regulations of the Commission.

70. Taking the foregoing explanation into account, the

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

71. To declare admissible case 11.381 relating to Milton García Fajardo and others.

72. To make itself available to the parties for the purpose of arriving at a friendly settlement of the matter based on the respect for human rights, as recognized in the American Convention. To that end, the parties shall manifest to the Commission their intention to initiate the friendly settlement procedure within the thirty (30) days following the notification of this report.

73. To publish this report in the Annual Report to the General Assembly of the OAS.