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Title/Style of Cause:	FEMAPOR v. Peru
Doc. Type:	Decision
Decided by:	President: Claudio Grossman; First Vice President: Juan Mendez; Second Vice-President: Marta Altolaguirre; Commission members: Hélio Bicudo, Robert K. Goldman, Peter Laurie, Julio Prado Vallejo.
Dated:	10 October 2001
Citation:	FEMAPOR v. Peru, Case 12.319, Inter-Am. C.H.R., Report No. 86/01, OEA/Ser./L/V/II.114, doc. 5, rev. (2001)

I. SUMMARY

1. On November 10, 1998, the Inter-American Commission on Human Rights (hereinafter "Inter-American Commission," "Commission," or "IACHR") received a petition lodged by the National Federation of Maritime and Port Workers of Peru (FEMAPOR) (hereinafter "petitioner") against the Republic of Peru (hereinafter "Peru," "Peruvian State," or "State"). The petitioner alleges that the Peruvian State has failed to comply with the decision of the Supreme Court of the Republic dated February 12, 1992. The petitioner maintains that this noncompliance constitutes a violation by Peru of the human rights of the Maritime and Port Workers of Peru and their family members.

2. The State has not questioned the admissibility of the petition.

3. Pursuant to the provisions of Articles 46 and 47 of the American Convention on Human Rights (hereinafter referred to as "American Convention" or "Convention"), the IACHR decided to admit the petition, insofar as possible violations of Articles 1(1) and 25(2)(c) of the American Convention are concerned. The Commission further decided to notify the parties of this decision, and to publish it and include it in its Annual Report to the OAS General Assembly.

II. PROCEDURES OF THE COMMISSION

4. The IACHR received the petition on November 10, 1998. On December 17, 1999, the petitioner submitted the additional information requested by the Commission. On August 17, 2000, the IACHR transmitted the relevant parts of the complaint to the Peruvian State and asked

it to submit information within a period of 90 days. On April 23, 2001, the IACHR made itself available to the parties to initiate a friendly settlement procedure.

5. On May 18, 2001, the Commission reiterated its request to the State for information. On June 25, 2001, the State submitted its response.

III. POSITION OF THE PARTIES

A. Position of the petitioner

6. Petitioner states that up to March 11, 1991, the approximately 4,106 maritime workers, who are organized locally into unions and affiliated nationally with FEMAPOR, were working on a rotation basis, according to the pertinent legal provisions. In this way, they assured that the various port jobs were performed exclusively by those workers, who were duly registered with their unions at each port and were working for many different employers, including maritime agencies, shipping companies, and the National Ports Company [Empresa Nacional de Puertos], and administered by the Maritime Labor Control Commission, [Comisión Controladora del Trabajo Marítimo] (CCTM), an agency belonging to the Ministry of Defense, which was established by Supreme Decree in 1935.

7. Petitioner reports that by another Supreme Decree (N° 054-91 PCM), dated March 11, 1991, the government appointed a Dissolution Committee responsible for liquidating the above-mentioned Maritime Labor Control Commission (CCTM). To do this, the Committee first had to perform the following functions: a) Sell the assets of the CCTM and the Maritime and River Labor Offices that were not transferred to the Ministry of Defense and the Ministry of Transportation and Communications, pursuant to Supreme Decree N° 054-91-PCM; b) Recover the debit balances charged to employers and other debts of CCTM and its offices; c) Pay the social benefits and entitlements of the workers in the different maritime unions under the jurisdiction of the agencies referred to; d) Pay the social benefits and entitlements of the administrative workers employed by CCTM and the river offices; e) Determine the method of payment of pensions to beneficiaries of the Vested Rights Fund of the former welfare system, stevedores registered at Callao port (FODASA); and f) Perform other tasks that were part of the liquidation process.

8. Petitioner further states that to ensure that these jobs were performed, which always used to be the joint responsibility of the CCTM and the Employers, the government, supported by the provisions of Article 4 of the referenced Supreme Decree N° 054-91 PCM, issued Ministerial Resolution N° 303-91 TC/15.03, which established that the many different employers were required to pay a contribution that amounted to an average of US$1,300,000.00 a month.

9. Petitioner indicated that since the liquidation procedure performed by the Dissolution Committee of the CCTM resulted in extremely small payments for the maritime workers, FEMAPOR initiated amparo proceedings, to ensure that CCTM would compute the payments correctly.

10. Petitioner adduced that on February 12, 1992, the Supreme Court of the Republic issued a decision in favor of the plaintiff. In compliance with that decision, the government issued Special Supreme Decree N° 030-PCM/92, dated April 4, 1992, by which the CCTM Dissolution Committee was required to take "steps to ensure that the maritime workers would receive the higher remuneration stipulated by the court; a situation which entails the restructuring of the basis for calculation and social benefits, in the relevant cases." Petitioner added that the new figure for liquidation computed by that Committee amounted to US$47,506,432.15.

11. Petitioner stated that in execution of that decision, the relevant judge granted to FEMAPOR attachment of the following assets that had been the property of the former CCTM: a) Bank funds amounting to US$3,040,745.89; b) Real estate valued at a total of US$384,583.47; c) Furnishings and movable assets valued at about US$20,150.69, for a total of approximately US$3,445,485.05. Petitioner added that as a result of the foregoing, the outstanding balance for collection amounted to US$44,060,949.65, not including interest and costs.

12. Petitioner alleged that even though the amounts required to cancel the outstanding debt had not yet been collected, the government, in apparent contradiction to the order of the Judiciary and its own laws, issued Decree-Law Nº 25702 on September 2, 1992. Articles 1 and 2 of that Decree-Law derogated 24 tax provisions, and, mixed in with them, it also derogated two provisions pertaining to the liquidation process of the former CCTM and, more importantly, payment of the social benefits referred to, or in other words, Article 4 of Supreme Decree N° 054-91 PCM and Ministerial Resolution N° 303-91 TC/15.03. They added, however, that the second paragraph of Article 4 of that Decree-Law N° 25702 established as follows: "Other entities that were to receive the taxes derogated under this Decree-Law and not included in the previous paragraph may submit a request to the Ministry of Economy and Finance, within a period not to exceed 30 calendar days, counting from the date this law enters into force, to the effect that the Ministry allocate to it an amount equivalent to the funds that it failed to collect as a result of this Decree-Law."

13. Petitioner pointed out that on September 24, 1992, that is within the period established by Article 4 of Decree-Law N° 25702, the petitioners delivered official letters Nos. 114-92 and 117-92, to the Ministry of Transportation and the Ministry of Economy, respectively. In those letters, FEMAPOR formally requested that the derogated legal provisions be reinstated or, failing that, that they do as follows pursuant to Article 4 of Decree-Law N° 25702: a) Allocate an amount equivalent to the total settlement of maritime and river workers' social benefits and entitlements; b) Allocate monthly amounts, starting in January 1993, equivalent to the pension statements of pensioners in the systems administered by the liquidated system.

14. Petitioner states that the provisions of Decree-Law N° 25702, in the part derogating Article 4 of Supreme Decree N° 054-91 PCM, and the provisions of Ministerial Resolution N° 303-91 TC/15.03, in regard to the provisions of its Article 4, constitute a subrogation of the Ministry of Economy and Finance, as the entity with specific responsibility for payment of social benefits and entitlements of maritime workers incumbent on the obligated Ministry prior to issuance of Decree-Law Nº 25702, since both Ministries are inseparable parts of the Peruvian State.

15. Petitioner states that, as a consequence, on August 11, 1997, FEMAPOR requested that, in execution of the judgment issued by the Supreme Court on February 12, 1992 as res judicata, the Ministry of Economy and Finance be summoned to make the payment of the amount owed the maritime and river workers, under penalty of otherwise hindering attachment of government property. Petitioner added that both the competent judge as well as the two vocales [voting members] of the Civil Division of the High Court of Callao decided to exonerate the Ministry of Economy and Finance of that legal responsibility, without taking into account the existence of Decree-Law Nº 25702. Petitioner indicated that there was a dissenting vote by one of the vocales, and even though the Civil Division sitting in judgment should have called one or two more vocales, as required, until obtaining the concurrence of three vocales, it did not do so. Petitioner indicated that it filed a complaint in this regard with the Social Constitutional Division of the Supreme Court.

16. In an addition to its complaint dated February 12, 2000, petitioner stated that on December 28, 1999, it received a decision from the Social Constitutional Division of the Supreme Court, which found the complaint lodged to be without merit and closed the record.

17. Petitioner stated that failure to comply with the judgment issued on February 12, 1992 by the Supreme Court caused serious damage to all the workers affected by that noncompliance, and to their family members, all of whom had sunk into a situation of poverty that prevented them from satisfying their minimum needs so that they could live in dignity.

B. Position of the State

18. The State indicated that in 1935, a Supreme Decree established the Maritime Labor Control Commission (CCTM), the agency that regulated, controlled, and managed the various port activities. It added that by Supreme Decree N° 054-91-PCM dated March 11, 1991, the Maritime Labor Control Commission, including the Maritime and River Labor Offices, was declared to be in dissolution. It pointed out that, pursuant to that law, the government provided for the creation of a Dissolution Committee, with responsibility for liquidating the CCTM. The pertinent provisions stated as follows:

Article 3.- The Dissolution Committee, shall have the following functions, to be performed within the period of time indicated, effective as of its establishment:

e.- Payment of the social benefits and entitlements of the administrative workers employed by the Maritime and River Control Commission.

d.- Payment of the social benefits and entitlements of the workers in the different maritime unions under the jurisdiction of the entities referred to.

Art. 4.- In the event that the funds administered by the Maritime and River Control Commission should not suffice to cover the amount required for payment of the social benefits and entitlements referred to in Art. 3° of this Supreme Decree, the Ministry of Transportation and Communications is authorized to issue the necessary legal provisions, for the responsibility of

the Maritime Agents who handle the loading and unloading of the imports and exports, without prejudice to the administrative responsibilities to be determined in due time.

19. It stated that by Ministerial Resolution N° 303-91 TC/15.03, the Peruvian government created a contribution of US$1,300,000,00 a month, to be paid by all the employers in the sector, in accordance with Article 3 of Supreme Decree N° 054-91-PCM. It added that the National Federation of Maritime and Port Workers of Peru (FEMAPOR), a national federation comprising the local unions engaged in the various port activities in the country, brought a legal action for amparo so that the CCTM would proceed with the correct calculations of the amount owed.

20. It reported that on February 12, 1992, the Supreme Court of the Republic issued a decision in favor of FEMAPOR, and declared that the decision of the lower court dated April 12, 1991 was not null and void, That decision stated that there was merit to the amparo suit, on the basis of which an additional increase in the basic monthly wages collected by maritime workers was ordered.

21. The State reported that, in compliance with the judgment handed down by the Supreme Court, the government issued Special Supreme Decree N° 030-PCM/92 dated April 4, 1992, providing for the CCTM Dissolution Committee to take the action required in relation to the higher wages granted by the court to the maritime workers.

22. The State further stated that the amount determined in the new liquidation procedure was approximately US$ 47,506,432.15. It indicated that since the previous process was in execution of judgment, it had granted FEMAPOR the attachment of assets that had been the property of the former CCTM, fixing their amount at US$ 3,445,485.05, thus leaving the remainder for collection at US$ 44,060,949.65.

23. The State reported that on September 2, 1992, by Decree-Law N° 25702, Article 4 of Supreme Decree N° 054-91-PCM and Ministerial Resolution N° 303-91-TC/15.03 were derogated. Both laws referred to taxes on the loading and unloading of products of international trade meant to finance the social benefits of workers under the responsibility of the Maritime and River Labor Control Commission. It stated that Article 4 of Decree-Law N° 25702 provided as follows:

The other entities that were to receive the taxes derogated in this Decree-Law and not included in the previous paragraph may request that the Ministry of Economy and Finance, within a period not to exceed 30 calendar days counting from the date this law takes effect, allocate an amount equivalent to the resources that they would have collected for that purpose.

24. The State went on to state that, by Supreme Decree N° 013-92-TCC, the Ministry of Economy and Finance was authorized to provide the resources needed to pay the benefits to which the beneficiaries of the vested interest fund of the former welfare system for stevedores in Callao port were entitled. It added that FEMAPOR submitted its requests to the Ministry of Economy and Finance and the Ministry of Transportation within the legal period of time, on September 24, 1992. It was formally stated in these letters of request that the derogation of Article 4 of Supreme Decree N° 054-91-PCM and Ministerial Resolution N° 303-91-TC/15.03

had been done in error, as the resources which they generated had been confused as taxes. Those letters included a request that, by annulment of the judgment derogating the legal provisions in question or by application of Article 4 of Decree-Law No. 25702, an amount equivalent to the total social benefits and entitlements be allocated to the maritime and river workers, and, effective January 1992, the monthly amounts equivalent to the pension schedules of pensioners in the systems administered by the dissolution system be allocated as well.

25. The State informed the IACHR that on August 11, 1997, FEMAPOR requested that, as part of the execution of judgment of the legal action against the CCTM, the Ministry of Economy and Finance be called upon to pay the amount owed to the maritime and river workers, under penalty of otherwise hindering attachment of government property. It added that by order dated January 15, 1998, the judge found the request formulated by FEMAPOR without merit, and gave as grounds for his decision the fact that the request was addressed to the Ministry of Economy and Finance, hence the request was to be answered by a resolution, as this was the appropriate administrative procedure.

26. The State reported that FEMAPOR appealed the decision of January 15, 1998, which was confirmed by the competent higher court, as it was of the opinion that the Ministry of Economy and Finance was not petitioned and so the request was without merit. It added that FEMAPOR requested that a vocal dirigente be designated in this instance, since it was of the opinion that three votes are required for a decision. FEMAPOR therefore asked that the decision be nullified. The State indicated that the Court found the request to be without merit. It added that FEMAPOR filed an appeal based on procedural violations of the lower court, which was declared inadmissible. It indicated that on August 27, 1998, FEMAPOR filed an appeal for refusal by the lower court to allow the appeal [recurso de queja] , which the Supreme Court declared inadmissible on January 28, 1999.

27. It concluded by summarizing that by Article 1(I) of Decree-Law Nº 25702, published in the Official Gazette "El Peruano" on September 2, 1992, Article 4 of Supreme Decree N° 054-91-PCM dated March 9, 1991 and Ministerial Resolution Nº 303-91-TC/15.03 of April 26, 1991 were derogated. These instruments referred to taxes on the loading and unloading of products of international trade meant to finance the social benefits of workers under the responsibility of the Maritime Labor Control Commission and the Maritime and River Labor Offices. It added that the Decree-Law in question established in Article 4, second paragraph, that the entity to receive the taxes, in this case the National Federation of Maritime and Port Workers of Peru (FEMAPOR), could request the Ministry of Economy and Finance to allocate an amount equivalent to the resources it had failed to receive as a result of derogation of Ministerial Resolution Nº 303-91-TC/15.03 and Article 4 of Supreme Decree Nº 054-91-PCM.

28. It reported that the Peruvian State has been evaluating financial possibilities with a view to arriving at a satisfactory solution to the present petition before the IACHR, using the resources of the Ministry of Economy and Finance. The State added that "since the term of office of the transition government is about to come to an end, any measures to be adopted would come from the new constitutional government."

IV. ANALYSIS

29. The Commission undertook an analysis of the requirements for admissibility of a petition, as established in the American Convention.

A. Competence of the Commission ratione personae, ratione loci, ratione temporis, and ratione materiae

30. The petitioners are authorized by Article 44 of the American Convention to lodge complaints with the IACHR. According to the petition, the presumed victims are private individuals, in respect of whom Peru has undertaken a commitment to respect and guarantee the rights enshrined in the American Convention. As far as the State is concerned, the Commission observes that Peru has been a State party to the American Convention since July 28, 1978, the date it deposited its instrument of ratification. Therefore, the Commission has competence ratione personae to consider the petition.

31. The Commission is competent ratione loci to consider this petition, because the petition alleges violations of rights protected by the American Convention that occurred within the territory of a state party to that agreement.

32. The IACHR is competent ratione temporis, because the events alleged in the petition took place when the obligation to respect and guarantee the rights established in the Convention were already in effect for the Peruvian State.

33 .Finally, the Commission is competent ratione materiae, because the petition reports violations of human rights protected by the American Convention.

B. Requirements for admissibility of the petition

1. Exhaustion of domestic remedies

34. The petition under consideration refers to noncompliance by the Peruvian State with the decision of the Supreme Court of the Republic dated February 12, 1992. The State did not enter any pleas in relation to the requirement of exhaustion of domestic remedies. On this point, the Inter-American Court has stated that "in order for a plea arguing failure to exhaust domestic remedies to be timely, it must be submitted in the early stages of the proceeding, and failure to do so may be presumed as tacit relinquishment by the state in question of its right to avail itself of that plea."[FN1]

[FN1] Inter-American Court of Human Rights, Velásquez Rodriguez Case, Preliminary Objections, Judgment of June 26, 1987, Series C, Nº 1, par. 8; Fairén Garbi and Solis Corrales Case, Preliminary Objections, Decision of June 26, 1987, Series C, Nº 2, par. 87; Gangaram Panday Case, Preliminary Objections, Judgment of December 4, 1991, Series C, Nº 12, par. 38; Loayza Tamayo Case, Preliminary Objections, Judgment of January 31, 1996, Series C, Nº 25, par. 40.

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35. The Commission considers that the requirement specified in Article 46(1)(a) of the American Convention has been met.

2. Deadline for lodging the petition

36. With regard to the requirement in Article 46(1)(b) of the Convention, which stipulates that the petition must be lodged within a period of six months from the date on which the victim was notified of the final decision on exhaustion of domestic remedies, the Commission confirms its position as follows:

noncompliance with a final judicial decision constitutes a continued violation by the persisting States and is a permanent infringement of Article 25 of the Convention, which establishes the right to effective judicial protection. Consequently, the requirement pertaining to the period for lodging petitions, as specified in Article 46(1)(b) of the American Convention, does not apply in these cases.[FN2]

[FN2] IACHR, 1998 Annual Report, Report N° 75/99 – César Cabrejos Bernuy, Case 11.800 (Peru), par. 22.

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37. In accordance with the foregoing, the requirement pertaining to the period for filing petitions, as specified in Article 46(1)(b) of the American Convention, is not applicable to the case in point, since what was submitted to the IACHR for its consideration was an allegation of continued noncompliance with a decision handed down by the Supreme Court of the Republic on February 12, 1992. In this regard, the Commission finds that the petition under consideration was submitted within a reasonable period of time, pursuant to the terms of Article 32 of its Regulations, equivalent in content to Article 38 of the Regulations in force at the time the complaint was lodged.

3. Duplication of procedures and res judicata

38. The Commission understands that the subject of the petition is not pending other international settlement procedures, nor is it a replication of another petition already considered by the Commission or another international organization. Therefore, the requirements established in Articles 46(1)(c) and 47(d) of the Convention have been met.

4. Description of the facts

39. The Commission considers that the statement by the petitioner refers to facts which, if proven, could represent a violation of the right to judicial protection established in Article 25(2)(c) of the American Convention, and a violation of the obligation to respect the rights referred to in Article 1(1) of said Convention.

V. CONCLUSIONS

40. The Commission concludes that it is competent to examine this petition and that it is admissible, pursuant to Articles 46 and 47 of the American Convention.

41. On the grounds of the above-mentioned arguments based on the facts and the law, and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the petition admissible in respect of possible violations of Articles 1(1) and 25(2)(c) of the American Convention on Human Rights.
2. To notify the parties of this decision.
3. To initiate proceedings on the merits of the case.
4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in Washington, D.C., on the 10th of October, 2001. Signed by Claudio Grossman, President; Juan Méndez, First Vice-President; Marta Altolaguirre, Second Vice-President; and Commissioners Hélio Bicudo, Robert K. Goldman, Peter Laurie, and Julio Prado Vallejo.