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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 122/01; Petition 15/00
Session:	Hundred and Thirteenth Regular Session (9 – 17 October and 12 – 16 November 2001)
Title/Style of Cause:	Wilma Rosa Posadas v. Argentina
Doc. Type:	Decision
Decided by:	President: Claudio Grossman; Second Vice-President: Marta Altolaguirre; Commission members: Helio Bicudo, Robert K. Goldman, Peter Laurie, Julio Prado Vallejo. The First Vice President of the IACHR, Juan E. Mendez, an Argentine national, did not participate in the discussions or vote on this petition, in keeping with Article 17(2)(a) of the Commission's Rules of Procedure.
Dated:	10 October 2001
Citation:	Rosa Posadas v. Argentina, Petition 15/00, Inter-Am. C.H.R., Report No. 122/01, OEA/Ser./L/V/II.114, doc. 5, rev. (2001)
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I. PROCEEDINGS BEFORE THE COMMISSION

1. On September 26, 1995, the Inter-American Commission on Human Rights (hereinafter the “Commission” or “IACHR”) received a complaint against the State of Argentina in connection with the situation of Wilma Rosa Posadas. On October 10, 1995, the Commission acknowledged receipt of the complaint and informed the petitioner that it would not be able to process her communication because the requirements stipulated in the Commission’s Regulations had not been fulfilled. Specifically, the Commission indicated that, according to its review, the facts of her case did not tend to characterize a violation of the rights guaranteed under the Convention, as required under Article 47(b). On October 30 of that year, the petitioner requested clarification from the Commission as to the meaning of the note wherein it had advised her that it could not process the complaint, specifically as to whether the Commission’s Executive Secretariat had the authority to adopt a decision of that type. On November 17, 1995, the petitioner sent a communication via fax, wherein she asked that the Executive Secretariat’s decision be reviewed, and if upheld, that it be set forth in a duly substantiated decision on inadmissibility. The petitioner reiterated her request in an undated communication contained in the case file. Finally, on January 14, 2000, with the representation of an attorney, the petitioner submitted a new petition to the Commission recounting the same facts. The petition was registered as number 0015/00. Copies of the same documents she had enclosed with her original petition were attached.

II. VIOLATIONS ALLEGED

2. The petitioner alleged violations of the rights protected in Articles 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial), 21 (right to property) and 25 (right to judicial protection) of the American Convention on Human Rights.

III. DESCRIPTION OF THE FACTS AND ARGUMENTS

3. From March 26, 1979 to May 27, 1991, Wilma Posadas worked as a secretary in the legal department of the firm of Astilleros Alianza S.A. de Construcciones Navales, Industrial, Comercial y Financiera (hereinafter "Alianza"). On May 27, 1991, she received a telegram advising her that she was being discharged from the company. The reason cited for her dismissal was a lack of work not attributable to the company. According to the petition, Alianza refused to pay the petitioner her final month's salary and the overtime and wage differentials she was owed. It also refused to give her any certification of her last years of service, which she needed to claim the benefits of early retirement.

4. Having rejected the cause invoked by Alianza and received no response, on September 2, 1991, the petitioner filed suit against the firm in National Labor Court No. 11, demanding payment of US\$19,440.12 for her last month's pay, salary differentials, unpaid overtime and compensation for dismissal without just cause. In his decision of May 5, 1993, the Labor Court Judge concluded that the grounds the firm had claimed for her dismissal did not appear to be justified. He thus upheld part of the petitioner's suit and ordered Alianza to pay \$10,900 pesos for severance and wages; that is, compensation for failure to give advance notice, severance compensation, compensation for wages, payment of the last month of work, compensation for unpaid vacation time and a portion of the annual bonus. However, the judge did not uphold her demand for payment of overtime and salary differentials, because the upper-level administrative personnel in the legal office, including legal secretaries, were not covered under any collective labor agreement and therefore were not so entitled. On May 27, 1993, the petitioner appealed the lower court ruling before the Appellate Labor Court, which in a ruling of April 29, 1994, agreed to hear the overtime complaint and decided to increase the sum of the award to \$13,601 pesos. Dissatisfied with the appellate court ruling, on June 28, 1994 the petitioner filed a special appeal, which that same court denied. Finally, the petitioner filed an extraordinary appeal before the Supreme Court which, in a ruling of March 28, 1995, dismissed it on the grounds that the appeal sought was inadmissible.

5. The petitioner argues, inter alia, that the rulings at the three levels of the judiciary that intervened in the case were inconsistent with the most elementary notions of justice, as they arbitrarily stripped her of what belonged to her; that when the case was still before the lower court, a "systematic-arbitrary 'mutilation' of important evidence" occurred and that in a "flagrant affront to the objective truth," more than 50% of the pension she would have been entitled to receive with the higher salary that was her real salary was frozen "for life" and she was assigned an amount that was less than what she was legally entitled to receive in overtime.

IV. ANALYSIS

6. The information in the case file indicates that the petitioner had access to the various remedies under domestic law and that the courts upheld the better part of her legal claims. The lower court found that her dismissal was without just cause and ordered the firm of Alianza to pay the petitioner not just the last salary owed but also all social benefits to which she was entitled, as well as compensation for the damages that the dismissal caused. Then the appellate court not only upheld the lower court ruling but ordered payment of the overtime she was due. Because the exact amount could not be calculated, the appellate court estimated the amount in accordance with the law.

7. Therefore, the only claim that the petitioner did not win in the local courts was the claim concerning salary differentials. However, both the lower court and the appellate court ruled that the petitioner was not entitled to the increases ordered by the Argentine Naval Workers Union, since as the petitioner herself acknowledged, she “was not covered under the agreement and documents signed by that union,”[FN1] as her post was classified as upper level administrative personnel.[FN2]

[FN1] Appellate Labor Court, ruling of April 29, 1994.

[FN2] National Labor Court N° 11, ruling of May 5, 1993.

8. From the evidence supplied by the petitioner, the Commission concludes that the refusal to examine evidence that the petitioner is claiming was due to the fact that the evidence in question was requested extemporaneously. The appellate court ruling on this particular point was that there is a legal deadline by which a litigant must ask the court to order evidence; because that request for evidence was not made within the legal time frame, the evidence was inadmissible.

9. Therefore, in the instant case, while the Commission observes the petitioner’s deep sense of dissatisfaction with the outcome of the case, it does not find anything arbitrary in its handling. The State’s obligation to administer justice is a guarantee of the means but not of the outcome, hence, its duty is not breached just because the outcome does not satisfy all the petitioner’s claims.[FN3] Thus, mere dissatisfaction with the outcome obtained from the administration of justice is not sufficient to disqualify it as arbitrary.

[FN3] This was the finding of the Inter-American Court of Human Rights in the Godinez Cruz Case concerning the obligation to prevent and investigate crimes. Judgment of January 20, 1989, par. 188.

10. Under the preamble of the American Convention on Human Rights, the protection that the organs of the inter-American system for the protection of human rights offers is intended to complement the protection afforded by the local courts.[FN4] The Commission cannot take upon itself the functions of an appeals court in order to examine alleged errors of fact or law that local courts may have committed while acting within the scope of their jurisdiction, unless there is

unequivocal evidence that the guarantees of due process recognized in the American Convention have been violated. In the instant case, the Commission finds nothing imputable to the administration of justice in Argentina that would tend to characterize a violation of the rights protected in that instrument.

[FN4] The preamble to the American Convention on Human Rights justifies international protection in the form of a convention to reinforce or complement the protection afforded by the domestic law of the American States.

V. DECISION

11. For these reasons, the Commission considers that the material facts of the petition under study do not tend to establish a violation of the American Convention and therefore declares it inadmissible, pursuant to Article 47(b) of the American Convention.

12. Based on the analysis and conclusions set forth in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the present petition inadmissible.
2. To notify the petitioner of this decision.
3. To publish this decision and include it in the Commission's Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C., on October 10, 2001. (Signed): Claudio Grossman, President; Marta Altolaguirre, Second Vice-President; Commission members Hélio Bicudo, Robert K. Goldman, Peter Laurie and Julio Prado Vallejo.