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Title/Style of Cause:	Workers of the Metropolitan Municipality of Lima and the Municipal Services Company of Lima v. Peru
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Decided by:	President: Claudio Grossman; First Vice-President: Juan Mendez; Second Vice-President: Marta Altolaguirre; Commissioners: Helio Bicudo, Robert K. Goldman, Peter Laurie, Julio Prado Vallejo.
Dated:	10 October 2001
Citation:	Workers of the Metropolitan Municipality of Lima v. Peru, Case 12.084, Inter-Am. C.H.R., Report No. 85/01, OEA/Ser./L/V/II.114, doc. 5, rev. (2001)
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I. SUMMARY

1. On January 13, 1999, the Inter-American Commission on Human Rights (hereinafter referred to as the “Inter-American Commission,” “Commission,” or “IACHR”) received a petition from the Union of Municipal Workers of Lima (SITRAMUN-LIMA), the Federation of Municipal Workers of Peru (FETRAMUNP), and the Lay-Offs Committee of the Municipal Maintenance Services Company of Lima (ESMLL) (hereinafter referred to as “petitioners”) against the Republic of Peru (hereinafter “Peru,” “Peruvian State,” or “State”). The petitioners allege that the Metropolitan Municipality of Lima has failed to comply with judicial decisions ordering it to re-employ laid-off workers (employees and laborers), to rescind wage reductions, and to comply with collective labor agreements. The petitioners maintain that these instances of noncompliance constitute a violation by the Peruvian State of the right to judicial protection established in Article 25 of the American Convention on Human Rights (hereinafter referred to as the “American Convention” or “Convention”).

2. The state has not responded to this petition.

3. The IACHR, pursuant to the provisions of Articles 46 and 47 of the American Convention, decided to admit the petition inasmuch as possible violations of Articles 1(1) and 25(2.c) of the American Convention are concerned, and to initiate procedures to determine the merits of the case. The Commission also 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. On January 19, 1999, the Commission sent the pertinent portions of the complaint to the Peruvian State and asked it to submit information within a period of 90 days. On March 4, 1999, a hearing was held by the IACHR at the petitioners' request. On April 14, 1999, the Mayor of Lima, Mr. Alberto Andrade Carmona, submitted an amicus curiae response, both on his own behalf and on behalf of the Metropolitan Municipality of Lima. On April 19, 1999, the Peruvian State requested that the time for submitting information be extended. On June 4, 1999, the Commission granted the request for an extension of 90 days, counting from the date the extension was granted. On June 9, 1999, the IACHR made itself available to the parties to initiate friendly settlement proceedings. This was accepted by both parties.

5. On June 11, 1999, the Commission sent additional information provided by the petitioners to the State and asked it to submit information within 60 days, counting from that date. On September 10, 1999, the IACHR advised the State that it agreed to suspend the deadline set in the letters from the IACHR dated June 4 and 11, 1999.

6. Between September 1999 and June 2000, the parties reported periodically to the Inter-American Commission on the status of the negotiations they were conducting to seek a possible friendly settlement. On October 13, 2000, a working meeting was held between the IACHR and both parties at IACHR headquarters. At that meeting, the petitioners reported that on March 15, 2000, they had reached an agreement on a friendly settlement with the State, and that they had signed a document to that effect. The State indicated that the persons who had signed the document pertaining to the friendly settlement had acted beyond their authority, and that it did not recognize that document as valid.

7. On October 31, 2000, the State requested the IACHR to go on with friendly settlement proceedings. On November 3, 2000, the Commission confirmed to both parties that it was prepared to assist in seeking a friendly settlement, and it established a period of 17 days for that purpose. On November 20, 2000, the State asked the IACHR to consider the friendly settlement process as concluded, and the petitioners presented the same request on November 24, 2000.

8. On April 6, 2001, the State reported that it had set up a multisectoral negotiating committee to be in charge of seeking possible solutions in an attempt to conclude a friendly settlement in the present case. On June 4, 2001, the Commission was informed that, by Ministerial Resolution N° 114-2001-PCM, the State had decided to consider the work of that multisectoral committee as finished, and "to have the present case resolved on the basis of the decision adopted by the Inter-American Commission on Human Rights in accordance with the procedure in effect."

9. On August 24, 2001, the Commission formally concluded its participation in the friendly settlement procedure in the present case and advised the State that the suspension of the deadlines referred to in the IACHR's letter of September 20, 1999, was null and void. At the same time, the IACHR requested that the State file its response to the petition within thirty days. The State responded on September 21, 2001.

III. POSITION OF THE PARTIES

A. Position of the petitioners

10. They allege that the Metropolitan Municipality of Lima has not complied with the judicial decisions ordering it to re-employ the workers (employees and laborers) who had been laid off, to rescind the wage reductions, and to comply with collective labor agreements. In this regard, the petitioners reported in their original complaint that, as of that point in time, the Metropolitan Municipality of Lima had failed to comply with the following decisions:

(i) Final judgment of February 6, 1997, issued by the Corporate Court Specializing in Public Law [Sala Corporativa Especializada en Derecho Público]; in execution of that decision, on June 13, 1997, the competent lower court [Juzgado de Primera Instancia] ordered the Metropolitan Municipality of Lima to reinstate over 400 workers in that municipality who had been affected by various resolutions according to which said workers were dismissed for redundancy. These dismissal resolutions were issued pursuant to Mayoral Resolution N° 033-A-96, dated January 16, 1996, which ordered a workers' evaluation process.

(ii) Final judgment of September 23, 1998, issued by the Corporate Court Specializing in Public Law; in execution of that decision, on November 19, 1998, the competent lower court ordered the Metropolitan Municipality of Lima to reinstate the workers in that municipality affected by Resolution No. 3776, issued on December 7, 1996, pursuant to which 318 workers of the Municipality of Lima had been dismissed. The plaintiffs in the proceeding that gave rise to those decisions were Mrs. Victoria Lavaró Yaca and others.

(iii) Final judgment of November 16, 1998, issued by the Corporate Court Specializing in Public Law; in execution of that decision, on December 23, 1998, the competent lower court ordered the Metropolitan Municipality of Lima to reinstate 483 workers of that municipality affected by various resolutions providing for the dismissal of those workers, on the basis of Mayoral Resolution No. 575 dated April 1, 1996. That Resolution had declared a strike illegal and had warned workers not to participate in it, on threat of administrative sanctions.

(iv) Final judgment of December 10, 1997, issued by the Constitutional Court, in application of which the competent lower court, on October 19, 1998, ordered that the Metropolitan Municipality of Lima settle, for the benefit of its workers, the difference corresponding to the reduction in their wages that had been approved by Mayoral Resolution N° 044-A-96, which resulted in a thirty percent decrease in the wages and pensions of all the workers.

(v) Final judgment issued on November 18, 1998 by the Corporate Court Specializing in Public Law, in execution of which the competent lower court, on December 22, 1998, ordered that the Metropolitan Municipality of Lima comply with the collective labor agreements concluded between 1989 and 1995, including their effects on wages and other compensation, and the unpaid wages from September to December 1995.

(vi) Final judgment issued on July 27, 1998 by the Corporate Court Specializing in Public Law, in execution of which on September 22, 1998, the competent lower court ordered the Metropolitan Municipality of Lima to rescind Ordinance N° 117 dated July 4, 1997, which provided for the continued application of Law 26093 and for the continued practice of evaluations and for further dismissals for redundancy.

(vii) Final judgment of April 3, 1998, issued by the Constitutional Court, which ordered the reinstatement to the Metropolitan Municipality of Lima of 16 workers who had been dismissed

pursuant to Mayoral Resolutions N° 572, 914, 1041, 1028, 1048, 1085, 1124, 1249, 1250, 1254, 1255, 1259, 1300, 1306, 1366, 1370, 1963, 1970, 1971, and 1988.

(viii) Final judgment of July 14, 1998, issued by the Corporate Court Specializing in Public Law, in execution of which the lower court, on September 24, 1998, ordered the Metropolitan Municipality of Lima to reinstate five workers who were dismissed by Mayoral Resolutions Nos. 786, 895, 899, 1252, and 1260.

(ix) Final judgment of May 13, 1998, issued by the Constitutional Court, in execution of which the lower court, on November 30, 1998, ordered the Metropolitan Municipality of Lima to reinstate four workers who were dismissed by Mayoral Resolutions N° 848, 911, 1037, and 2020.

(x) Final judgment of October 16, 1998, issued by the Constitutional Court, which ordered the Metropolitan Municipality of Lima to reinstate a worker who was dismissed by Mayoral Resolution N° 1151.

(xi) Final judgment of June 6, 1997, issued by the Corporate Court Specializing in Public Law, in execution of which, on January 19, 1998, the competent lower court ordered the Metropolitan Municipality of Lima to reinstate three workers of that municipality who had not reached an agreement with the Municipality regarding compliance with the aforesaid decision and who insisted on their reinstatement, in accordance with the decision referred to.

(xii) Final judgment dated July 8, 1998, issued by the Constitutional Court, in execution of which the competent lower court, on November 25, 1998, ordered the Metropolitan Municipality of Lima to reinstate the workers of the Municipal Maintenance Services Company of Lima (ESMLL) who had not collected their social benefits.

B. Position of the State

11. The State did not file a response to the allegations by the petitioners, nor did it question the admissibility of the petition under consideration. In its response dated September 21, 2001, the State indicated that “it had decided to wait for the decision to be adopted by the honorable Commission.”

IV. ANALYSIS

12. 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*

13. 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. In this regard, and for the purposes of this report on admissibility, the Commission considers as presumed victims in this matter all the workers (employees and laborers) covered by the decisions referred to in paragraph 10 above, or their surviving family members, as applicable. This does not preclude the possibility that the Commission, having heard the arguments of the parties on the matter, could make a final determination as to the presumed victims and the decisions included in the case when it decides

on the merits of the case. 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.

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

15. The IACHR has jurisdiction *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 in the Peruvian State.

16. Finally, the Commission has jurisdiction *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

17. The petition under consideration refers to noncompliance with court decisions which ordered the Metropolitan Municipality of Lima to reinstate workers (employees and laborers) who had been dismissed, to rescind wage reductions, and to comply with collective labor agreements.

18. The State has not submitted any pleas in relation to the requirement that domestic remedies be exhausted. 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.”

19. 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

20. 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.[1]

[FN1] Inter-American Court of Human Rights, Velásquez Rodríguez Cae, Preliminary Pleas, Decision of June 26, 1987, Series C, N° 1, par. 8; Fairén Garbi and Solís Corrales Case, Preliminary Pleas, Decision of June 26, 1987, Series C, N° 2, par. 87; Gangaram Panday Case, Preliminary Pleas, Decision of December 4, 1991, Series C, N° 12, par. 38; Loayza Tamayo Case, Preliminary Pleas, Decision of January 31, 1996, Series C, N° 25, par. 40. IACHR, 1998 Annual Report, Report N° 75/99 – César Cabrejos Bernuy, Case 11.800 (Peru), par. 22.

21. 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 the judgments issued by the Constitutional Court, the Corporate Court Specializing in Public Law, and the lower courts, which ordered that the dismissed workers (employees and laborers) be reinstated, that the wage reductions be rescinded, and that collective labor agreements be honored. In this regard, the Commission finds that the petition in question was lodged within a reasonable period of time, pursuant to the terms of Article 32 of its Regulations, equivalent in content to the terms of Article 38 of the Regulations pertaining to the deadline for presentation of petitions.

3. Duplication of procedures and res judicata

22. 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

23. The Commission considers that the statement by the petitioners 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

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

25. 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.