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Session: Hundred and Thirteenth Regular Session (9 – 17 October and 12 – 16 November 2001)
Title/Style of Cause: Liliana Zambrano Pacheco v. Peru
Doc. Type: Decision
Decided by: President: Claudio Grossman;
First Vice-President: Juan Mendez;
Second Vice-President: Marta Altolaguirre;
Commissioners: Helio Bicudo, Robert K. Goldman, Julio Prado Vallejo, Peter Laurie.
Dated: 10 October 2001
Citation: Zambrano Pacheco v. Peru, Petition 12.203, Inter-Am. C.H.R., Report No. 95/01, OEA/Ser./L/V/II.114, doc. 5, rev. (2001)
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I. SUMMARY

1. The Inter-American Commission on Human Rights (hereinafter the “Commission,” the “Inter-American Commission,” or the “IACHR”) received a petition, dated June 25, 1998, lodged by Mrs. Liliana Zambrano Pacheco (hereinafter the “petitioner”), alleging that the Republic of Peru (hereinafter “Peru,” the “State,” or the “Peruvian State”) had violated her human rights by unlawfully relieving her of her duties as an administrative official with the Arequipa Municipal Council.

2. The Peruvian State maintains that the petition is inadmissible as it was not lodged within the six-month period allowed under Article 46(1)(b) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”).

3. In keeping with Articles 46(1)(b) and 47(a) of the American Convention, the IACHR decides to declare the petition inadmissible. The Commission also decides to notify the parties of this decision, to publish it, and to include it in its Annual Report to the OAS General Assembly.

II. PROCESSING BY THE COMMISSION

4. On June 25, 1998, the petitioner sent her petition to the Inter-American Court of Human Rights in Costa Rica. The Inter-American Court received the petition on July 1, 1998, and forwarded it to the IACHR on July 2, 1998. The IACHR received it on July 27, 1998.

5. On August 27, 1999, the Commission decided to open the case, pursuant to the Regulations then in force, transmitted the pertinent parts of the petition to the Peruvian State, and requested that it present information within 90 days. On November 26, 1999, the Peruvian State forwarded its reply. On February 16, 2000, the petitioner submitted observations on the State's reply. On May 3, 2000, the State provided additional information.

III. POSITION OF THE PARTIES

A. Position of the petitioner

6. The petitioner indicates that, in 1980, she was hired by the Arequipa Municipal Council as an administrative official, a time when the Civil Service Statute and Career Scale established by Legislative Decree 11377 was in force. She adds that, pursuant to that decree, the aptitude and ability of public officials was evaluated at the time of their entry into government service.

7. She states that on December 28, 1992, the Government of Peru issued Legislative Decree 26093, which provides that all Peruvian public officials, regardless of date of entry into government service, were to be evaluated every six months, and that those who did not meet the standard were to be relieved of their duties on the grounds of redundancy.

8. The petitioner alleges that, through retroactive application of Legislative Decree 26093 and application of the second paragraph of the eighth transitory and final provision of Law 26553, the Mayor of Arequipa Municipal Council, Roger Cáceres Pérez, decided to implement a staff evaluation program.

9. She indicates that, in application of that program, she, along with all municipal government officials, was required to take an evaluation exam. Had she refused, she could have been dismissed for failure to take the exam. She alleges that the examination was marked by the Arequipa Municipal Council officials themselves, "exclusively on the basis of the criteria of those public officials subordinate to the Mayor of Arequipa."

10. She states that the Mayor availed himself of the occasion to relieve of their duties all workers who had not found favor with him or did not share his political views and that, to that end, he issued Municipal Resolution N° 279-E-96, which, as of December 1, 1996, made the petitioner redundant, alleging that she had not attained the minimum standard in the evaluation.

11. She alleges that the resolution relieving her of her duties failed to mention that the written exam had not been made available to her so that she could check the mark she had been given, and that it also failed to mention that, as a career official who had obtained her position through public competitive examination, she was not required to take the examination, and its marking was irrelevant in her case.

12. She indicates that, having exhausted the administrative appeals procedure, she applied for a writ of amparo against the Mayor of Arequipa for violation of her constitutional rights of employment, due process, and against retroactive application of the law, requesting that the said

municipal resolution relieving her of her public duties be declared inapplicable and that she be reinstated in her position, with all allowable back payments.

13. She states that, in judgment N° 16-97, issued by the First Civil Court of Arequipa, on January 10, 1997, this court of first instance found in her favor, established that the said resolution relieving her of her duties did not apply, and ordered that she be reinstated as a public official, with back payment plus interest.

14. She indicates that Arequipa Municipal Council appealed against that decision to the First Civil Chamber of the Superior Court of Justice of Arequipa. That court issued its decision on February 27, 1997, overturning the lower court's decision and finding that a writ of amparo was not the appropriate instrument to establish the legality of administrative acts.

15. She states that an appeal was lodged with the Constitutional Court against the decision of the Superior Court. On August 22, 1997, that Court issued its decision, in which it also found that there were no grounds for the judgment of the court of first instance, as it did not consider that the petitioner's constitutional rights had been violated.

16. The petitioner alleges that the instant petition was lodged as soon as she was notified of the aforementioned decision of the Constitutional Court of August 22, 1997.

B. Position of the State

17. The State notes that, on January 3, 1997, the Arequipa Municipal Government responded to the writ of amparo for which the petitioner had made application to the First Civil Court of Arequipa, claiming that, in evaluating the staff, all requirements had been satisfied and all regulations followed.

18. The State indicates that, by decision of January 10, 1997, the First Civil Court of Arequipa found without substance the objections made by the aforementioned municipal government and allowed the application for amparo, considering mainly that "Both Law N° 11377 and Legislative Decree 276 applied to the applicant. Therefore, the provisions of Law 26553 did not apply (...)".

19. It states that the respondent municipal government filed an appeal with the First Civil Chamber of the Superior Court of Justice of Arequipa.

20. It alleges that, in its decision of February 27, 1997, the Civil Chamber set aside the lower court's decision and found the application for amparo inadmissible, as it considered that "the fact that the plaintiff had entered into service prior to the issuing of the provisions ordering the evaluation does not imply that they were retroactively applied ... [and] that the residual remedy of amparo is not an appropriate instrument to establish the legality of the administrative steps taken to evaluate staff."

21. It states that Mrs. Zambrano Pacheco lodged an appeal to have the aforementioned judgment reversed (recurso de casación), "and, therefore, in keeping with the principles of

recognition and respect for due process and the right of legal pluralism (pluralidad de instancias), observed throughout the process, the action was brought before the Constitutional Court, pursuant to Article 41 of its Organic Law.”

22. It indicates that the Constitutional Court issued its judgment on August 22, 1997, “rescinding the decision of the First Civil Chamber of the Superior Court of Justice of Arequipa, of February 7, 1997, which found the application for amparo inadmissible, and amending that decision to read that the grounds for the application were unsubstantiated,” arguing that Mrs. Zambrano Pacheco was relieved of her duties pursuant to Decree Law N° 26093, and that “there is no evidence or opinion to substantiate the citizen’s claim that her constitutional rights were violated.”

23. The State alleges that the petitioner was notified of the aforementioned judgment of the Constitutional Court “which exhausted the domestic remedies” on October 28, 1997.

24. The State indicates that the pertinent parts of the petition were transmitted to it on August 27, 1999, and that, as the State was given no indication of the date on which the petition was lodged with the IACHR, it must be inferred that, “in keeping with the presumption of good faith and with the initial processing as regulated (...), the date recorded in the pertinent parts (...) is a transcription of the date of receipt recorded on the original petition lodged by the petitioner.”

25. It alleges that, in view of the foregoing, it must be inferred that the date on which the petition was lodged with the IACHR was August 27, 1999, and that, as the petitioner was notified of said judgment of the Constitutional Court on October 28, 1997, the petition must be declared inadmissible, as the period between the two dates was considerably longer than that allowed under Article 46(1)(b) of the American Convention for lodging petitions with the IACHR, which is a period of six months from the date on which the party alleging the violation of his rights was notified of the decision that exhausted the domestic remedies.

IV. ANALYSIS OF ADMISSIBILITY

26. The Commission now proceeds to examine the requirements established in the American Convention for admissibility of a petition.

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

27. The petitioner satisfies the requirements for filing petitions with the IACHR set forth in Article 44 of the American Convention. The petition states that the alleged victim is a person whose rights, as enshrined in the American Convention, Peru undertook to respect and guarantee. As concerns the State, the Commission notes that Peru has been a State Party to the American Convention since July 28, 1978, the date of deposit of its instrument of ratification. Therefore, the Commission has competence *ratione personae* to examine the case.

28. The Commission has competence *ratione loci* to examine the case, as the petition alleges violations of rights protected by the American Convention taking place within the territory of a State Party thereto.

29. The IACHR has competence *ratione temporis*, in that the incidents alleged in the petition took place when the obligation to respect and guarantee the rights established in the Convention was in force for the Peruvian State.

30. Lastly, the Commission has competence *ratione materiae*, as the petition alleges violations of human rights protected by the American Convention.

B. Requirements for admissibility of the petition

1. Filing period

31. The Commission now proceeds to analyze the requirement for admissibility of the petition set forth in Article 46(1)(b) of the Convention, which provides that:

Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements: (...) b. that the petition or communication is lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment.

32. In the present matter, the Peruvian State alleges that the petitioner was notified of the judgment that exhausted the remedies provided by domestic law on October 28, 1997. In that connection, the Commission notes that, in answering the State's assertion, the petitioner only alleged that she had sent the petition as soon as she was notified of the judgment of the Constitutional Court, but did not contradict that assertion, nor did she demonstrate that she had been notified of that judgment on a date other than that alleged by the State. In that connection, the IACHR takes as substantiated that on October 28, 1997, the petitioner was notified of the Constitutional Court's judgment of August 22, 1997.

33. With respect to the date on which the petition was lodged with the Commission, Peru contends that the pertinent parts of the petition were transmitted to it on August 27, 1999, and that, as the date on which the petition was lodged with the IACHR was not indicated on the pertinent parts of the petition, it must be inferred that it was on that same date—that is, August 27, 1999—that the petition was lodged with the IACHR.

34. In that connection, the Commission must note that the date the petition was lodged with the IACHR is of course not the same date as the date of when the pertinent parts of the petition were transmitted to the State. The IACHR receives petitions through its Executive Secretariat, studies them, and then sends the State the pertinent parts of those petitions that comply *prima facie* with the applicable requirements. The effective date for calculation of the period stipulated in Article 46(1)(b) of the Convention is the date that the petition is lodged with the Commission, and not that of the transmittal of the pertinent parts of the petition to the State.[FN1]

[FN1] In a case in which Peru made the preliminary objection that the petition was time-barred, arguing that by the time the petition was transmitted to it, six months had passed, the Inter-American Court of Human Rights decided that the effective date was the date that the petition was lodged with the Commission. See Inter-American Court of Human Rights, Case of Cantoral Benavides, Preliminary Objections, judgment of September 3, 1998, paragraphs 36, 37, 39, and 40.

35. The instant petition contains a certified copy issued by the Lima-based Serpost postal company that shows that the petition was sent by the petitioner to the Inter-American Court of Human Rights, in San José, Costa Rica, on June 25, 1998.[FN2] The Inter-American Court received the petition on July 1, 1998, sent it to the IACHR the following day, and notified the petitioner of its action. The IACHR received the petition on July 27, 1998, and recorded that date in the register of petitions received.

[FN2] The petition's heading states that it is addressed to the "President of the Inter-American Commission on Human Rights."

36. In that connection, it should be noted that even if the view more favorable to the petitioner is taken, which is to take the petition as presented on June 25, 1998, the proven date of receipt of the petition by the Inter-American Court, the petition is still time-barred, as there is a period of seven months and 28 days between October 28, 1997, the date of notification of the Constitutional Court's judgment that exhausted domestic remedies, and June 25, 1998, the date on which the petition was lodged. That is, the period of six months established in Article 46(1)(b) of the American Convention was exceeded by one month and 28 days.

37. For the foregoing reasons, and as the instant petition was lodged with the Inter-American Commission after the six-month period established in Article 46(1)(b) of the American Convention, the Commission concludes that the instant petition is inadmissible. In view of the foregoing, the IACHR abstains from examining the other requirements for admissibility contained in the Convention, the question being moot.

V. CONCLUSION

38. The Commission has established that the petition does not satisfy the requirement of Article 46(1)(b) of the American Convention. The Commission therefore concludes that it is inadmissible pursuant to Article 47(a) of the American Convention.

39. Based on the arguments of fact and law set forth above,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case inadmissible.
2. To notify the petitioner and the State of this decision.
3. 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 this 10th day of October, 2001. (Signed): Claudio Grossman, President; Juan Méndez, First Vice-President; Marta Altolaguirre, Second Vice-President; Commissioners: Hélio Bicudo, Robert K. Goldman, Julio Prado Vallejo, and Peter Laurie.