Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 16/03; Petition 346/01
Session:	Hundred and Seventeenth Regular Session (17 February – 7 March 2003)
Title/Style of Cause:	Edison Rodrigo Toledo Echeverria v. Ecuador
Doc. Type:	Decision
Decided by:	President: Juan Mendez; First Vice-President: Marta Altolaguirre; Second Vice-President: Jose Zalaquett; Commissioners: Robert K. Goldman, Clare K. Roberts. Julio Prado Vallejo, an Ecuadorian national, did not participate in this case in keeping with Article 17(2)(a) of the Rules of Procedure of the Commission.
Dated:	20 February 2003
Citation:	Toledo Echeverria v. Ecuador, Petition 346/01, Inter-Am. C.H.R., Report No. 16/03, OEA/Ser.L/V/II.118, doc. 5 rev. 2 (2003)

I. SUMMARY

1. On June 8, 2001, the Inter-American Commission on Human Rights (hereinafter "the Commission") received a petition dated May 9, submitted by Mr. Edison Rodrigo Toledo Echeverría, (hereinafter, "the petitioner"), against the Republic of Ecuador (hereinafter "the State" or "Ecuador"), in which he alleges the international responsibility of the Republic of Ecuador, as representative of the Ecuadorian Judiciary, for violation of the guarantees recognized in Article 24 (Right to Equal Protection) of the American Convention on Human Rights (hereinafter the "Convention" or the "American Convention"). For its part, the State requested the Commission to find the petition inadmissible for failure to meet the admissibility requirements contained in the Convention, inasmuch as there has been no violation of the rights enshrined in the Pact of San Jose, and because the Commission is not an appellate court or a fourth instance.

2. The petitioner, Mr. Edison Toledo, a petroleum engineer, filed a complaint, Nº 346/2001, against the Ecuadorian State, specifically against the Justices of the First Chamber for Labor and Social Matters of the Supreme Court of Justice, Messrs. Miguel Villacís Gómez, Hugo Quintana Coello and Gil Vela Vasco, alleging that they had violated his right to equal protection of the law. The petitioner alleges that he was dismissed without due notice and that his suit before the domestic courts for compensation was thrown out due to a formality contained in the collective labor agreement. He says that on other occasions that Court has found such formalities to be unnecessary; therefore, they did not use the same criterion in his case, which, in his opinion, violates the right to equal protection.

3. In this report the Commission examines the information presented in the light of the American Convention and concludes that the instant petition does not meet the admissibility requirements set down in the Convention and decides to declare it inadmissible in accordance with Article 47 of the American Convention and Article 34 of the Rules of Procedure of the IACHR, transmit it to the parties, makes it public, and include it in the Annual Report.

II. PROCESSING BY THE COMMISSION

4. On July 9, 2001, the Commission forwarded the pertinent portions of the petition to the Government of Ecuador, so that it might present its position, and gave it 60 days to reply.

5. The State submitted a detailed reply on November 15, 2001, and the pertinent parts were transmitted to the petitioner for comments. On December 21, 2001, the petitioner sent the Commission his comments to the reply of the Government. The processing of the comments of the parties continued in accordance with the Commission's Rules of Procedure.

III. POSITIONS OF THE PARTIES

A. Position of the petitioner

6. The petitioner, Mr. Edison Toledo, began to work for the Consortium CEPE-TEXACO on January 1, 1979. When the consortium ceased to exist the petitioner went straight to PETROAMAZONAS, a subsidiary of PETROECUADOR, and later he joined PETROPRODUCCION. The petitioner alleges that in the second half of 1993 his employer relieved him of specific duties, in spite of his reiterated claims, for which reason he considered himself dismissed without due notice.

7. Under the Unified Collective Labor Agreement signed on May 9, 1994, by Petroproducción and the National Single Central Committee of Petroproducción Workers "Petroproducción shall not relieve a worker of his duties for any reason; otherwise it shall be considered dismissal without due notice and the Company shall pay the compensation provided for in Article 12 herein and in the Labor Code."

8. According to the petitioner, Petroproducción relieved him of his duties, which were transferred to his subordinate, Mr. Galo Vicente Arévalo. Petroproducción also removed his name from the attendance roll, for which reason he sued the company for dismissal without due notice, and sought payment of compensation in accordance with the aforementioned labor agreement then in force.

9. On August 2, 1994, the petitioner requested the Manager of Petroproducción that he be given his severance pay on account of his dismissal, and said that he also wished to hand over his effects. After 15 days he had received no reply. On September 2, 1994, at the request of Mr. Toledo, the Inspector of Labor summoned the Manager of Petroproducción in order to pay the benefits and the respective compensation, but he did not appear.

10. On September 5, 1994, the petitioner filed suit Nº 278/1994 against his employer, Petroproducción, and joint and severally against Mauro Dávila, as Manager, for dismissal without due notice and for failure to pay him his respective compensation and benefits.[FN2] In a summary oral proceeding the petitioner sued his then-employer, Petroproducción, and set the amount of his claim at one hundred forty-eight million sucres (S148,000,000) not counting interest.

[FN2] The petitioner later dropped his claim against Mr. Mauro Dávila because the latter stopped working for Petroproducción.

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11. For its part, Petroproducción denies having dismissed Mr. Toledo without due notice, and claims that he voluntarily and unilaterally decided to abandon his job for more than three days.

12. On January 7, 1997, the Third Court for Labor Matters in and for Pichincha (Quito) partially rejected the petitioner's claim because it did not find that he had been dismissed without due notice, and it ordered payment only of wages and leave.

13. On April 3, 1997, the Fourth Chamber of the Superior Court of Justice examined the appeal filed by the petitioner and upheld the judgment of the lower court, ordering Petroproducción to pay the petitioner the amount of six million eight hundred eighty-five thousand seven hundred seven sucres and 40/100 (S 6,885,707.40) in severance pay plus the corresponding interest.

14. On November 29, 2000, the First Chamber for Labor and Social Matters of the Supreme Court of Justice rejected the cassation appeal, with the argument that the petitioner should first have exhausted the remedies under the administrative jurisdiction, in other words, he should have sought the intervention of the Worker-Employer Committee in the dispute in accordance with Article 54 of the First Unified Collective Labor Agreement. Furthermore, the cassation judgment states that the other provisions invoked by the petitioner in connection with the dismissal without due notice were not violated.

15. According to the petitioner, the aforesaid Worker-Employer Committee had not been created when he filed his suit on September 5, 1994, but that, precisely because of his complaint, it was created eighteen days later on September 23, 1994.

16. According to the petitioner, the judgment affirms that an essential procedural requirement was overlooked (omission to request the intervention of the Worker-Employer Committee in the dispute). The petitioner holds that such an affirmation is inadmissible in the light of several decisions of the Supreme Court of Justice. Moreover, the Chamber itself had rejected such an opinion due to the fact that it regards it as a mere formality, and failure to observe it has no effect on the guarantees of due process, and, furthermore, that provision in the agreement neither makes it a condition for the employee, nor obligates him, as a prior step to his judicial complaint, to submit the case to the aforesaid entity for hearing and resolution.

17. With respect to the obligation to take one's case first to the Worker-Employer Committee, the petitioner says that the same Chamber of the Supreme Court of Justice, in the action brought by Mrs. María de Lourdes Cobo against Petroproducción, a copy of which he had attached to his petition, the Supreme Court had determined that the standing obligation under the above-mentioned collective agreement to recourse to the Worker-Employer Committee was merely a formality and failure to observe it did not affect the guarantees of due process.

18. According to the petitioner, such contradictory rulings on the same matter fully demonstrate that the right to equal protection has been infringed by Ecuador. Based on these arguments, the petitioner requests the Commission to find the State responsible for violation of the right to equal protection (Article 24) enshrined in the American Convention on Human Rights in contravention of the obligations contained in Article 1(1) thereof.

19. The petitioner also filed a complaint for damages against the Justices of the First Chamber for Labor and Social Matters of the Supreme Court of Justice who took part in proceedings in Case Nº 278/1994 because he regarded their decision as biased and unfair. This complaint for damages remains pending.

B. Position of the State

20. In its letter of November 15, 2001, the Government transmits the official response, Nº 20183 of October 10, 2001, and maintains that the competent tribunals heard the instant case and reached a decision on it in accordance with the law, and that this decision, regardless of whether it was favorable or unfavorable, was appropriate for resolving the situation of the petitioner. As the Inter-American Court of Human Rights has found, "the mere fact that a domestic remedy does not produce a result favorable to the petitioner does not in and of itself demonstrate the inexistence or exhaustion of all effective domestic remedies. For example, the petitioner may not have invoked the appropriate remedy in a timely fashion."[FN3]

[FN3] Inter-Am. Ct. H.R., Velásquez Rodríguez Case, Judgment of July 29, 1988, para. 67.

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21. Based on the foregoing, it follows that in a judicial proceeding conducted in accordance with the guarantees of due process, as in the instant case, the fact that the judgment is unfavorable in no way implies a violation of the rights enshrined in the American Convention, if the judgment is the result of a fair trial, as was the case in the labor proceeding in the Ecuadorian Courts.

22. The Government of Ecuador considers that the petitioner, due to the fact that he disagrees with the judgments rendered by the domestic courts, seeks to use the Commission as a "fourth instance", and it draws attention to the fact that those judgments partially accept the claims of Mr. Toledo, and differ only on the amount of the compensation sought. Therefore, the petitioner considers that the rulings of the courts were biased and not in accordance with the law.

23. The function of the Commission is to ensure observance of the obligations of the states parties under the Convention. However, it cannot act as an appellate court to examine alleged errors of law or of fact that domestic courts might have committed in their jurisdiction.

24. Therefore, the inconformity of the petitioner with the judicial rulings issued by the competent judges on matters within their jurisdiction, is not grounds for the Commission to review or reverse such rulings because the Commission is not an appellate court and it is not for it to nullify judicial decisions, but rather to ensure that the states provide their citizens with justice, strictly in accordance with the requirements of due process of law. For the Commission to act otherwise would pervert the inter-American system for protection of human rights.

25. The Ecuadorian State considers that the petitioner seeks to come before the Commission so that the latter might review the proceedings of the tribunal and declare them void if there are errors of fact or of law in its decision because he regards the ruling as biased and not in accordance with the law. Ecuador reiterates that all the judicial guarantees were preserved and that the proceedings were conducted in accordance with the law, and, therefore, there cannot have been any violation of the rights protected by the Convention.

26. The State says that the Inter-American Court of Human Rights in the Suárez Rosero Case found that "it can not nor should not discuss or judge the character of the crimes attributed to the alleged victims […] as that is reserved to the appropriate criminal court. The Court is called upon only to decide on concrete violations of the provisions of the Convention, concerning any persons and independent of the legal situation that applies to them or of the legality or illegally of their conduct from the perspective of the [...] national law" in question. According to the State, the Commission should abstain from analyzing this situation and instead determine if there have been violations of the rights enshrined in the Convention.

27. Thus, the State of Ecuador bases its position on the findings of the Inter-American Court of Human Rights in similar cases: “What is decisive is whether a violation of the rights recognized by the Convention has occurred with the support or the acquiescence of the government, or whether the State has allowed the act to take place without taking measures to prevent it or to punish those responsible”[FN4].

[FN4] Velásquez Rodríguez Case, supra Nº 3 para. 173; Godínez Cruz Case, Judgment of January 29, 1989, para. 183; Gangaram Panday Case, Judgment of December 4, 1991, para. 62.

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28. The State of Ecuador considers that under Article 47 of the American Convention, the Commission should declare the instant petition inadmissible inasmuch as it does not state facts that tend to establish a violation of the rights guaranteed by that international instrument.

IV. ANALYSIS

A. The Commission’s competence ratione personae, ratione loci, and ratione temporis

29. The petitioners are entitled under Article 44 of the American Convention to lodge petitions with the Commission. The petition names Mr. Edison Rodrigo Toledo Echeverría as the alleged victim in accordance with Article 1(2) of the American Convention. The accused State, the Republic of Ecuador, ratified the American Convention on December 28, 1977. Therefore, the Commission is competent, ratione personae, to examine the petition.

30. The alleged violations were committed within the jurisdiction of the Republic of Ecuador, therefore, the Commission is competent, ratione loci.

31. The alleged violations were committed after the ratification of the American Convention on December 28, 1977, therefore, the Commission is competent, ratione temporis.

32. The instant petition alleges violations of rights set forth in the American Convention, therefore the Commission is competent, ratione materiae.

B. Other Admissibility Requirements

a. Exhaustion of domestic remedies

33. All the remedies under domestic law were exhausted with the judgment of the Supreme Court of Justice of November 29, 2000, in accordance with Article 46(1)(a) of the Convention.

b. Filing period

34. Since the petition was presented to the Commission on May 29, 2001, six months after the judgment of the Supreme Court of Justice, it is within the period stipulated in Article 46 (1)(b) of the Convention.

c. Duplication of proceedings and res judicata

35. There is no prior proceeding connected with the aforesaid petition before the Commission, nor is it pending in another international proceeding for settlement.

d. Nature of the alleged violations

36. The instant case concerns an alleged violation of Article 24 of the Convention. The petitioner's case is against the three Justices of the First Chamber for Labor and Social Matters of the Supreme Court of Justice, for allegedly having deprived him of the right to equal protection of the law, set forth in Article 24 of the Convention. The essence of the petitioner's complaint is that the Supreme Court rejected his complaint based on the reasoning that first, he should have sought the intervention of the Worker-Employer Committee in the dispute, in the manner prescribed in Article 54 of the First Unified Collective Labor Agreement, whereas in another case brought against Petroproducción, the same Court held that, with respect to the obligation to go first before the Worker-Employer Committee, that such a requirement was a mere formality and failure to observe it did not affect, in any way, the guarantees of due process.

37. Upon closer analysis however, the two cases do not appear to present the same issue to the Supreme Court, that of compensation for dismissal without due notice. In the petitioner's case, the Supreme Court states that Mr. Toledo decided voluntarily and at his own risk to absent himself from his place of work from August 25, 1994 onward, saying that he has been without functions for more than half a year. Further the Court notes that:

. . . in the cassation appeal the appellant says he remained without functions for more than one year, a situation repugnant to reason and common sense because it is inadmissible that a person should receive or benefit from a salary and other benefits without doing anything (...) and even worse that he should decide to continue to benefit in order to claim an alleged dismissal without due notice in order to procure for himself further revenues in the form of the compensation provided for in Article 12 of the Collective Labor Agreement. Furthermore, just before the creation of the Worker-Employer Committee–to which the appellant has been appointed as an alternate member-he decided to absent himself from his work and
file–omitting to meet the requirement provided in the aforesaid Article 54–the judicial complaint that gave rise to this proceeding.

38. The Commission agrees with the State that the petitioner is seeking to use the Commission as a "fourth instance" to review the judgment of the Ecuadorian Supreme Court in his case. The consistent jurisprudence of the Commission has been that it is not within its province to substitute its own assessment of the facts for that of the domestic courts, and as a general rule, it is for these courts to assess the evidence before them. The Commission's task is to ascertain whether the proceedings, in their entirety, were fair. As the Commission stated in its leading case on this issue:

The Commission is competent to declare a petition admissible and rule on its merits when it portrays a claim that a domestic legal decision constitutes a disregard of the right to a fair trial, or if it appears to violate any other right guaranteed by the Convention. However, if it contains nothing but the allegation that the decision was wrong or unjust in itself, the petition must be dismissed under this formula. The Commission's task is to ensure the observance of the obligations undertaken by the States parties to the Convention, but it cannot serve as an appellate court to examine alleged errors of internal law or fact that may have been committed by the domestic courts acting within their jurisdiction.[FN5]

[FN5] Report Nº 39/96, Case 11.673, Marzioni (Argentina), October 15, 1996.

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39. As in the Marzioni case, in which the petitioner also alleged denial of equality before the law, the Commission considers that the petitioner has not been able to supply information to prove that there was no "objective and reasonable justification" for the different treatment between the two judgments of the Ecuadorian Supreme Court. The fact that he was not awarded the same amount as the other person does not, in itself, constitute discrimination.[FN6] The Commission agrees with the State that the petitioner had his day in Court and that the fact that the judgment is unfavorable in no way implies a violation of the rights enshrined in the American Convention. In the view of the Commission, the petitioner has failed to meet his burden of

showing that there was no objective and reasonable justification for the different treatment accorded the two cases.

[FN6] Id. para. 43.

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40. Based on the foregoing, the Commission finds that it is not competent to make a decision on the merits of the matter and, therefore, abstains from analyzing it because the facts alleged in the petition do not characterize a violation of the rights enshrined in the American Convention.

V. CONCLUSIONS

41. Based on the factual and legal arguments given above, the Commission finds that the petition is inadmissible in accordance with the requirements contained in Article 47(b) of the American Convention because it does not state facts that constitute a violation of any of the rights protected by that Convention.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the petition inadmissible inasmuch as it does not concern a violation of the human rights protected by the Convention.
2. To notify the parties of this decision.
3. To publish this decision and to 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 the city of Washington, D.C., on the 20th day of the month of February in the year 2003. Signed: Juan Méndez, President; Marta Altolaguirre, First Vice-President; José Zalaquett, Second Vice-President; and Robert K. Goldman and Clare K. Roberts, Commissioners.