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Institution: Inter-American Commission on Human Rights  
File Number(s): Report No. 1/04; Petition 4391/02  
Session: Hundred and Nineteenth Regular Session (23 February – 12 March 2004)  
Title/Style of Cause: Sergio Emilio Cadena Antolinez v. Colombia  
Doc. Type: Decision  
Decided by: President: Jose Zalaquett;  
First Vice-President: Clare K. Roberts;  
Second Vice-President: Susana Villaran;  
Commissioners: Evelio Fernandez Arevalos, Paulo Sergio Pinheiro, Freddy Gutierrez Trejo, Florentin Melendez.  
Dated: 24 February 2004  
Citation: Cadena Antolinez v. Colombia, Petition 4391/02, Inter-Am. C.H.R., Report No. 1/04, OEA/Ser.L/V/II.122, doc. 5 rev. 1 (2004)  
Represented by: APPLICANT: the Corporacion Colectivo de Abogados “Jose Alvear Restrepo”  
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## I. SUMMARY

1. On October 22, 2002 the Inter-American Commission on Human Rights (hereinafter “the Commission” or the “IACHR”) received a petition lodged by the Corporación Colectivo de Abogados “José Alvear Restrepo” (hereinafter the “petitioners”), which alleges that the Republic of Colombia (hereinafter the “State”, the “Colombian State”, or “Colombia”) is responsible for denial of access to effective judicial remedy for determination of the rights of Sergio Emilio Cadena Antolinez in light of non-compliance with judgment N° SU-1185/2001 of the Constitutional Court of November 13, 2001 by the Labor Cassation Chamber of the Supreme Court of Justice.

2. The petitioners argue that the State is responsible for violation of Articles 8 (right to a fair trial), 24 (right to equal protection), 25 (right to judicial protection) and 1(1) of the American Convention on Human Rights (hereinafter the “Convention” or the “American Convention”) and that the admissibility requirement regarding exhaustion of the remedies under domestic law in accordance with Article 46(1) of the Convention is not applicable in the instant matter. The State, for its part, did not submit its position on the factual and legal arguments contained in the petition, despite reiterated requests from the Commission.

3. Having examined the available information, the Commission declared the case admissible in accordance with the requirements provided in Articles 46 and 47 of the Convention, and decided to notify the parties and publish its report.

## II. PROCEEDINGS BEFORE THE COMMISSION

4. The Commission registered the petition and assigned it number P4391/2002 and on December 26, 2002 it proceeded to transmit the pertinent portions to the State, giving it two months to present information on the allegations made in the petition, pursuant to Article 30(2) of the IACHR Rules of Procedure. On March 14, 2003 the Colombian State requested the Commission for an extension of 30 days to submit its reply. On March 20, 2003 the Commission granted the requested extension. The time period elapsed without the State submitting its observations.

5. On June 9, 2003 the petitioners requested the Commission to presume the facts alleged in the petition to be true in view of the delay of the state in submitting its reply, and to declare the case admissible. On August 28, 2003 the Commission sent a communication to the State reiterating its request for information. In view of the silence of the State, the Commission reiterated its request for information on November 13, 2003. To date no reply has been forthcoming.

## III. POSITIONS OF THE PARTIES

### A. Position of the petitioners

6. The petition states that Mr. Sergio Emilio Cadena Antolinez was an employee of the Banco de la República (Central Bank) from February 20, 1980 to January 13, 1997, when he was dismissed. The petitioners allege that the dismissal lacked due cause and that, consequently, at the time of the events Mr. Cadena Antolinez was protected by Article 8(3) of a collective labor agreement that contained the obligation for the Banco de la República to pay a pension to employees with more than 10 years of service who were dismissed without due cause. The letter of dismissal issued by the Bank recognized its position as a debtor but conditioned its obligation to the fact that Mr. Cadena Antolinez had to be of the prescribed age “in accordance with the law” in order to benefit from the pension. Accordingly, the latter argued that the age of the beneficiary was not a precondition for the application of the collective labor agreement.

7. The petitioners say after he had exhausted the administrative remedy available, Mr. Cadena filed suit with the 20th Labor Court of the Bogota Circuit, which, in first instance, ordered the Banco de la República to pay the pension owing to Mr. Cadena Antolinez. This judgment was appealed by both parties and upheld by the Superior Court of the Bogotá Judicial District, which amended the amount of the monthly payment in favor of Mr. Cadena Antolinez. Subsequently, the Banco de la República filed an extraordinarily appeal with the Labor Cassation Chamber of the Supreme Court of Justice. The Supreme Court ruled in favor of the Banco de la República by means of an interlocutory order of February 11, 2000.

8. In response, Mr. Cadena Antolinez filed for a writ of protection (tutela) from the Tribunal of Judicial Discipline of the Sectional Council of the Judiciary of Cundinamarca, which was denied and confirmed by the Judicial Tribunal of the Superior Council of the Judiciary on August 31, 2000. Mr. Cadena Antolinez then filed a motion to review the writ of protection with the Constitutional Court.

9. The petitioners say that by means of judgment SU-1185/2001 of November 13, 2001, the Constitutional Court ordered the reversal of the decision of the Judicial Tribunal of the Superior Council of the Judiciary of August 31, 2000 and granted the writ of protection for the rights of Mr. Cadena Antolinez to a fair trial and equal treatment. In order to restore the impaired rights, the decision of the Constitutional Court ordered the proceeding returned to the Labor Cassation Chamber of the Supreme Court of Justice for it to issue a new judgment in 30 days.

10. The petitioners say that in spite of the decision adopted by the Constitutional Court, on May 16, 2002 the Labor Cassation Chamber of the Supreme Court of Justice decided to ratify the validity of the judgment originally returned on February 11, 2000. They say that this situation prompted Mr. Cadena Antolinez to institute a contempt proceeding (incidente de desacato) with the Tribunal of Judicial Discipline of the Sectional Council of the Judiciary of Cundinamarca and to request full compliance with Constitutional Court Decision SU-1185/2001 which protected his rights.

11. On August 2, 2002 the Sectional Council of the Judiciary said that it lacked competence to take up the contempt proceeding and ordered the record referred to the Committee on Investigations and Accusations of the House of Representatives. The petitioners argue that the Committee on Investigations and Accusations is only competent to examine faults of a disciplinary nature by justices of the Labor Cassation Chamber of the Supreme Court of Justice but that the contempt of judgment SU-1185/2001 and its impairment of the enjoyment of Mr. Cadena Antolinez's rights continues. To date the decision of the Constitutional Court in this case has not been complied with.

12. As to admissibility of the instant petition, the petitioners argue that they should be granted exemption from the requirement of prior exhaustion of domestic remedies provided in Article 46(1) of the American Convention, based on the exception at Article 46(2)(a) of the Convention. They further consider that the six-month deadline provided in Article 46(1)(b) of the American Convention is not applicable.[FN1] In addition, they argue that the failure to comply with a final court judgment constitutes a continued violation by the State that persists as an ongoing breach of Article 25 of the Convention and that, accordingly, in cases such as the instant one this requirement should not apply.[FN2]

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[FN1] The petitioners cite a series of precedents on this interpretation of the American Convention, including the following reports: Report N° 75/99, Case 11.800, Cesar Cabrejos Bernuy, Peru, May 4, 1999, paragraph 21; Report N° 89/99 Case 12.034, Carlos Torres Benvenuto, Peru, September 27, 1999, paragraph 22; and Report N° 85/01 Case 12.084, Workers of the Metropolitan Municipality of Lima and the Municipal Services Company of Lima, Peru, October 10, 2001, paragraph 20.

[FN2] The petitioners cite a series of precedents on this interpretation of the American Convention, including the following reports: Report N° 75/99, Case 11.800 Cesar Cabrejos Bernuy, Peru, May 4, 1999, paragraph 22; Report N° 89/99 Case 12.034 Carlos Torres Benvenuto, Peru, September 27, 1999, paragraph 23; Report N° 85/01 Case 12.084, Workers of

the Metropolitan Municipality of Lima and the Municipal Services Company of Lima, Peru, October 10, 2001, paragraph 21.

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13. As to merits, the petitioners argue that the alleged facts constitute violation by the Colombian State of the rights to a fair trial, equal protection, and effective judicial protection, provided in Articles 8(1), 24 and 25 of the American Convention, as well as the general duty under Article 1(1) of the Convention to ensure respect for the rights protected therein.

B. Position of the State

14. Despite the reiterated requests of the IACHR (see paragraphs 4 and 5 supra), the State declined to present its position on the factual and legal arguments of the petitioners or on their interpretation of the application of Articles 46 and 47 of the American Convention.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

A. Competence

15. The petitioners are entitled, in principle, under Article 44 of the American Convention to lodge petitions with the Commission. The petition names as an alleged victim an individual in respect of whom the Colombian State undertook to observe and ensure the rights enshrined in the American Convention. Colombia has been a state party to the Convention since July 31, 1973, the date on which it deposited its instrument of ratification. Therefore, the Commission has *ratione personae* competence to examine the petition.

16. Furthermore, the Commission has *ratione loci* competence to hear the petition, since it alleges violations of rights protected by the American Convention said to have occurred within the jurisdiction of the State. The IACHR has *ratione temporis* competence to examine the petition inasmuch as the duty to respect and ensure the rights protected in the American Convention was in force for the State at the time the violations alleged in the petition are purported to have occurred. Finally the Commission has *ratione materiae* competence because the petition alleges violations of human rights protected by the American Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

17. Article 46(1)(a) of the American Convention provides that admission of a petition shall be subject to the following requirement:

a. that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.

The jurisprudence of the Inter-American Court of Human Rights has determined that the rule of prior exhaustion of domestic remedies was conceived for the benefit of States.[FN3] Therefore,

it is a requirement that may be waived either expressly or tacitly by the State party concerned. In the instant case, the State abstained from presenting arguments on the application of Article 46(1) of the American Convention to the complaint lodged by the petitioners. Accordingly, the Commission concludes that the State has tacitly waived its right to demand compliance with this requirement before the IACHR can proceed with an examination of the merits of the matter.

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[FN3] Inter-Am. Ct. H.R., In the Matter of Viviana Gallardo et al., No. 101/81, Ser. A, Resolution of July 15, 1981, Decision of November 13, 1981, para. 26, Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987, Ser. C, No. 1, para. 88; Fairén Garbi y Solís Corrales Case, Preliminary Objections, Judgment of June 26, 1987, Ser. C, No. 2, para. 87; Godínez Cruz Case, Preliminary Objections, Judgment of June 26, 1987, Ser. C, No. 3, para. 86; Inter-Am. Ct. H.R., Gangaram Panday Case, Preliminary Objections, Judgment of December 4, 1991, Ser. C, No.12, para. 38; Neira Alegría et al. Case, Preliminary Objections, Judgment of December 11, 1991, Ser. C, No.13, para. 30; Castillo Páez Case, Preliminary Objections, Judgment of January 30, 1996, Ser. C, No. 24, para. 40; and Loayza Tamayo Case, Preliminary Objections, Judgment of January 31, 1996, Ser. C, No. 25, para. 40.

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## 2. Deadline for lodging the petition

18. The IACHR has determined that the Colombian State has tacitly waived its right to make the objection asserting non-exhaustion of domestic remedies with respect to this particular petition. Accordingly, the requirement contained in Article 46(1)(b) of the American Convention is not applicable. However, the requirements contained in the Convention on exhaustion of domestic remedies and on presentation within the six-month deadline counted from the notification of the judicial decision that exhausted the remedies under domestic law are independent. In such cases, the IACHR must determine if the petition has been presented within a reasonable time.

19. In this instance, the IACHR notes that the judicial remedy invoked by Mr. Antolinez to obtain a ruling on the alleged injury to his rights by reason of the disregard of the judgment issued by the Constitutional Court was effectively exhausted on August 2, 2002. Given that the petition was lodged with the IACHR on October 22, 2002 and in light of the circumstances of this particular case, the Commission concludes that it was lodged in a reasonable time.

## 3. Duplication of proceedings and res judicata

20. There is nothing in the record to suggest that the petition is pending before another international proceeding for settlement or that it is substantially the same as one previously studied by the Commission or by another international organization. Therefore, the Commission finds that the requirements established in Articles 46(1)(c) and 47(d) of the Convention have been met.

## 4. Characterization of the alleged facts

21. The Commission considers that the petitioner's arguments regarding the alleged violation of the rights to a fair trial, to equal protection, and to effective judicial protection could tend to establish a violation of the rights guaranteed in Articles 8, 24 and 25, in conjunction with Article 1(1) of the American Convention. Insofar as these aspects of the petition are not manifestly groundless or out of order, the Commission considers that the requirements set down at Articles 47(b) and (c) of the American Convention have been met.

## V. CONCLUSIONS

22. The Commission concludes that it is competent to examine the claims presented by the petitioners on alleged violation of Articles 8, 24, and 25, in conjunction with Article 1(1) of the American Convention and that these are admissible in accordance with the requirements contained in Articles 46 and 47 of the American Convention.

23. Based on the factual and legal arguments given above, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant case admissible with respect to Articles 8, 24, 25, and 1(1) of the American Convention.
2. To notify the State and the petitioners of this decision.
3. To proceed with its analysis of 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 the city of Washington, D.C., on the 24th day of February 2004. (Signed): José Zalaquett, President; Clare K. Roberts, First Vice President; Susana Villarán, Second Vice President; Evelio Fernández Arévalos, Paulo Sergio Pinheiro, Freddy Gutiérrez Trejo and Florentín Meléndez, Commission Members.