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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 85/05; Petition 430/00
Session: Hundred Twenty-Third Regular Session (11 – 28 October 2005)
Title/Style of Cause: Romeel Eduardo Diaz Luna v. Peru
Doc. Type: Decision
Decided by: President: Clare K. Roberts;
Second Vice-President: Paulo Sergio Pinheiro;
Commissioners: Evelio Fernandez Arevalos, Jose Zalaquett, Freddy Gutierrez, Florentin Melendez.
In compliance with Article 17(2a) of the Commission’s Rules of Procedure, Commissioner Susana Villaran, a Peruvian national, did not participate in the discussion of or the vote on this report.

Dated: 24 October 2005
Citation: Diaz Luna v. Peru, Petition 430/00, Inter-Am. C.H.R., Report No. 85/05, OEA/Ser.L/V/II.124, doc. 5 (2005)

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I. SUMMARY

1. On August 16, 2000, the Inter-American Commission on Human Rights (hereinafter the “Inter-American Commission,” or “the Commission,” or “the IACHR”) received a petition lodged by Mr. Romeel Eduardo Díaz Luna (hereinafter the “petitioner”) against the Republic of Peru (hereinafter “Peru,” the “Peruvian State,” or “the State”). The petitioner alleges that the Peruvian State has not fully complied with the court judgment ordering the payment of social benefits to Mr. Díaz Luna. The petitioner maintains that he has been gravely injured by the failure to pay the sum corresponding to the interest according to the terms of the judgment.

2. The State alleges that the petition is inadmissible because it fails to set out facts that tend to establish a violation of the rights enshrined in the American Convention on Human Rights.

3. In the instant report, the Commission examines the available information in light of the American Convention and concludes that the petitioner did not submit his petition within a reasonable time. The Commission therefore decides to declare the petition inadmissible in accordance with Article 32 of the Rules of Procedure of the Commission, to notify the parties accordingly, to make its decision public, and to arrange for its publication in the Commission's Annual Report.

II. PROCEEDINGS BEFORE THE COMMISSION

4. The petition was submitted to the Inter-American Commission on August 16, 2000, and registered under number P 430/00. On August 26, 2003, the petitioner submitted additional information, and on November 18, 2003, the Commission forwarded to the Peruvian State the relevant parts of the complaint and requested that it submit its observations within a period of two months. On January 29, 2004, the Commission granted the State a one-month extension to reply to the request for information.

5. On March 3, 2004, the State submitted its observations, which were transmitted to the petitioner on April 5, 2004, with a period of 30 days to submit his considerations. On March 25, 2004, the petitioner submitted additional information, which was forwarded to the State on April 5, 2004, so that it could submit its observations within 30 days. On May 28, 2004, the petitioner submitted observations on the State's reply, and on June 21, 2004, the State provided additional information.

6. The Commission relayed that communication to the petitioner on July 13, 2004, and received a response on September 1, 2004. The petitioner submitted additional information on November 23, 2004, and on December 8 said observations by the petitioner were transmitted to the Peruvian state. On January 14, 2005, the State requested a further extension of the time limit for responding, and on January 26, 2005, it was granted an additional month. As of the date of this report, the Commission has not received any further observations by the State. On April 5, 2005, the petitioner submitted additional information.

III. POSITION OF THE PARTIES

A. Position of the Petitioner

7. The petitioner alleges that, after working for more than 18 years at the Banco Popular del Perú (hereinafter the "Banco Popular" or "Banco"), he was unjustly dismissed on September 2, 1992. He notes that on December 1, 1992, the Superintendency of Banks and Insurance issued a resolution declaring Banco Popular del Perú in the process of being dissolved.

8. According to the petitioner, after Banco Popular entered the liquidation process, it failed to deliver the group life insurance policy to the workers. He argues that upon dismissing him, the bank was required to provide him a partial endorsement or to inform the insurance company of the dismissal of the workers in order for the latter to continue paying their premiums. The petitioner alleges that he was never informed that the policy existed nor what insurance company had issued it. He maintains that it was the obligation of the employer (Banco Popular) to carry out these procedures and that it failed to do so, leading to the expiration of the policy and the consequent loss of benefits.

9. The petitioner indicates that he therefore brought proceedings against the decision to dismiss before the 13th Labor Court of Lima. Through a resolution dated June 29, 1993, his claim was accepted. This judgment declared the dismissal of Mr. Díaz Luna unjust and ordered the reinstatement of the petitioner in his former position along with the corresponding salary and interest owed him. On July 21, 1993, the Third Chamber for Labor Matters upheld the resolution.

10. According to the petition, on May 16, 1994, the Office of Judicial Expert Reports issued an Expert Report ruling that Mr. Díaz Luna was owed a total of 15,768.33 nuevos soles (S/.): for wage arrears, S/. 7,618.65; for special damages, S/. 4,151.28; and for legal interest, S/. 3,998.40. The petitioner indicates that through a resolution dated November 28, 1994, the 13th Labor Court in Lima executed the judgment and ordered Banco Popular to fulfill its obligation to pay the amount of S/. 15,768.33 within 24 hours, under the penalties provided by law.

11. On December 13, 1994, the bank presented a communication with which it delivered the sum of S/. 11,769.93, corresponding to the wage arrears as well as the special damages; nevertheless, the bank objected to the payment of legal interest, with the argument that in accordance with the General Law on Banking Institutions, the legal interest was to be paid at the end of the process of dissolving the company. In response, the petitioner maintains that the Judicial Branch had reviewed the applicable laws and still ruled in his favor.

12. In January 1995, the petitioner attempted to have the aforesaid judgment enforced through requests to the competent court. Nevertheless, the Bank has not fulfilled its obligation to pay the legal interest, amounting to S/. 3,998.40.

13. The petitioner also alleges that his rights were violated for not having been included in the third and final list of collective layoffs, published in the official gazette El Peruano on October 2, 2004. With regard to the steps taken by the petitioner in response to the failure to include his name in the lists of workers laid off unjustly, he says that he contacted the President of the Labor Committee in the Peruvian Congress by e-mail on October 25, 2004, but he does not indicate that he brought judicial proceedings.

B. Position of the State

14. In relation to the transfer of the life insurance policy, the State argues that under the new insurance system, the workers dismissed needed to inform the insurance company of their interest to continue with the same insurance system and consequently assume payment of the corresponding premiums. Otherwise, the policy would expire. The State alleges that the employer would therefore be relieved of any related obligation except that of delivering social benefits and declaring beneficiaries, without the delivery of the group insurance policy.

15. Concerning the legal interest owed to Mr. Díaz Luna, the State argues that such interest should be paid by the Bank in liquidation, according to the order of priority indicated in the General Law on Banking, Financial and Insurance Institutions (Legislative Decree No. 770). The State indicates that said Decree establishes that, although the debts of a banking or financial company continue to earn interest at the legal rate, such interest is paid only once the principal on the obligations has been paid.

16. The State alleges that in view of the foregoing, and under Article 47, section (b), of the American Convention, the petition must be declared inadmissible, inasmuch as it fails to set out facts that establish a violation of rights guaranteed by the American Convention on Human Rights.

IV. ANALYSIS

17. The Commission will now examine the requirements that the American Convention establishes for a petition's admissibility.

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

18. The petitioner is authorized by Article 44 of the American Convention to lodge complaints with the IACHR. The petition states that the alleged victim is a private individual, in respect of whom Peru has undertaken a commitment to respect and guarantee the rights enshrined in the American Convention. 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 *ratione personae* competence to consider the petition.

19. The Commission has *ratione loci* competence to consider the petition because the petition alleges violations of rights protected by the American Convention that occurred within the territory of a State Party to that agreement.

20. The IACHR is competent *ratione temporis*, because the events alleged in the petition took place when the obligation to respect and guarantee the rights established in the Convention was in effect for the Peruvian State.

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

B. Admissibility requirements

1. Exhaustion of domestic remedies

22. The petition under consideration refers to noncompliance by the Peruvian State with the judgment of the 13th Labor Court in Lima, issued on November 28, 1994. The State did not enter any objection in relation to the requirement of exhaustion of local remedies. The Inter-American Court has held 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 may be presumed as tacit relinquishment by the States in question of its right to avail itself of that plea." [FN2]

[FN2] Inter-American Court of Human Rights, Case of Velásquez Rodríguez, Preliminary Objections, Judgment of June 26, 1987, Series C No. 1, para. 8; Case of Fairén Garbi and Solís Corrales, Preliminary Objections, Judgment of June 26, 1987, Series C No. 2, para. 87; Case of Gangaram Panday, Preliminary Objections, Judgment of December 4, 1991, Series C No. 12, para. 38; Case of Loayza Tamayo, Preliminary Objections, Judgment of January 31, 1996, Series C No. 25, para. 40.

23. In accordance with the above, the Commission considers that the State opted not to file an objection for failure to exhaust.

2. Timeliness of the petition

24. With regard to the requirement established in Article 46(1)(b) of the Convention, which stipulates that petitions must be lodged within a period of six months from the date on which the victim was notified of the final judgment exhausting 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. [FN3]

[FN3] IACHR, Annual Report 1998, Report N° 75/99 – César Cabrejos Bernuy, Case 11.800 (Peru), para. 22.

25. 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 the issue submitted to the IACHR is the alleged continued non-compliance with the judgment handed down by the 13th Labor Court in Lima, on November 28, 1994, that ordered the Bank to pay the wage arrears, special damages for the unjust dismissal, and interest owed to Mr. Díaz Luna.

26. Given that the exception to the requirement of prior exhaustion of domestic remedies applied in this case, the Commission must determine if Mr. Díaz Luna lodged his petition within a reasonable period of time, pursuant to the terms of Article 32 of its Rules of Procedure of the Commission.

Article 32 of the Rules of Procedure of the IACHR provides that:

In those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.

27. On this question, the Commission notes that more than five years elapsed between the last procedure conducted by the petitioner to file a claim for the violation committed and the petitioner's lodging of his complaint to the IACHR; that is, the last attempted domestic remedy was presented on January 25, 1995, and the petition was received at the Commission on August 16, 2000. In the Commission's opinion, the time elapsed between when the petitioner learned of

the respondent company's refusal to comply with the entire judgment and his lodging of the complaint--approximately six years--is not a reasonable term in this case.

28. Therefore, the Commission finds that the instant petition was not presented within a reasonable period of time as stipulated by Article 32 of the Rules of Procedure of the IACHR.

V. CONCLUSIONS

29. Given that the IACHR has determined that the instant petition does not meet the requirement of timely presentation, after the exception to the rule of prior exhaustion of domestic proved applicable, it is not necessary to refer to the other arguments of the parties in connection with Article 47 of the American Convention.

30. Accordingly, the Commission concludes that the petition under review does not meet the requirement provided in Article 32(2) of the Rules of Procedure of the Inter-American Commission on Human Rights and is inadmissible in accordance with Article 47(a) of the American Convention.

THE INTER-AMERICAN COMMISSION OF HUMAN RIGHTS,

DECIDES:

1. To declare the instant case inadmissible.
2. To notify the petitioners and the State of this decision.
3. To make public this decision and to include it in its Annual Report to the General Assembly of the OAS.

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 the month of October in the year 2005. (Signed): Clare K. Roberts, President; Susana Villarán, First Vice-President; Paulo Sérgio Pinheiro, Second Vice-President; Commissioners Evelio Fernández Arévalos, José Zalaquett, Freddy Gutiérrez and Florentín Meléndez.