

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 86/05, Petition 4416/02
Session: Hundred Twenty-Third Regular Session (11 – 28 October 2005)
Title/Style of Cause: Luis Edgar Vera Flores 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 accordance with the provisions of Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner Susana Villaran, a Peruvian national, did not participate in the debate or decision in the instant case.

Dated: 24 October 2005
Citation: Vera Flores v. Peru, Petition 4416/02, Inter-Am. C.H.R., Report No. 86/05, OEA/Ser.L/V/II.124, doc. 5 (2005)

Terms of Use: Your use of this document constitutes your consent to the Terms and Conditions found at www.worldcourts.com/index/eng/terms.htm

I. SUMMARY

1. By petition submitted to the Inter-American Commission on Human Rights (“the IACHR” or “the Commission”) on December 13, 2002, Luis Edgar Vera Flores (hereinafter “the petitioner”) alleged that the State of Peru (hereinafter “Peru”, “the State ” or “the Peruvian State”) violated his right to the due process guarantees enshrined in Article 8 del American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”), in conjunction with Article 1(1) of the same international instrument. The alleged violations relate to irregularities committed by the Banco Central de Reserva del Perú [Central Reserve Bank of Peru] (hereinafter “the BCR” or “the Bank”) when, in 1992, it formally initiated a collective dismissal process for structural reasons before the Ministry of Labor.

2. With regard to the admissibility of the petition, the petitioner claims that domestic remedies have been exhausted and that the petition was lodged within the conventional time period from the date on which he was notified of the final judgment.

3. The State, for its part, asserts that there was no violation of the rights enshrined in the American Convention and that the petitioner failed to exhaust the available domestic remedies.

4. In this report, the Commission analyzes the available information in light of the American Convention and concludes that the petitioner failed to exhaust the available domestic remedies in accordance with the provision set forth in Article 46(1)(a). The Commission decides,

therefore, to declare the petition inadmissible under Article 47(a) of the American Convention, forward its report to the parties, and publish it in the Annual Report.

II. PROCESSING BEFORE THE IACHR

5. The Commission received the complaint on December 13, 2002, assigned it number 4416/2002, and forwarded the pertinent portions thereof to the Peruvian State on November 19, 2003, giving it a two-month period to submit its observations. On January 20, 2004, the State submitted its response to the complaint and the Commission forwarded the relevant parts of that reply to the petitioner. The latter in turn, presented his observations in communications received on March 8 and 22, 2004, which the IACHR duly forwarded on April 5, 2004.

6. On May 10, 2004, the State requested an extension of the deadline to submit its observations, which the Commission granted on June 3, 2004. By note dated July 6, 2004, the State submitted its observations to the information presented by the petitioner, which were forwarded to the petitioner on July 13, 2004.

7. Since that date, the parties have continued to submit additional information on the case, each maintaining their respective allegations. In communications received on August 19, 2004, October 6, 2004, and January 26, 2005, the petitioner submitted his additional observations. Likewise, the State submitted its observations in communications dated December 6, 2004, January 14, 2004, and August 5, 2005.

III. Position of the PARTIES

A. Position of the Petitioner

8. The petitioner claims that in 1992, through Legislative Decree N° 728, the Central Reserve Bank of Peru formally initiated before the Ministry of Labor a process of collective dismissals for structural reasons, File N° 1039-92, which included Mr. Luis Edgar Vera Flores, among other workers.

9. The petitioner contends that this law, aside from being unconstitutional because it was issued after the so called “self-coup” of April 5, 1992, was not applicable to him because he started working at the Bank under the Political Constitution of 1979, which provided for absolute job stability; that is, a worker could not be dismissed unless a serious offense had been committed. He adds, moreover, that since his employment contract was governed by Law N° 24514 providing for absolute job security, Legislative Decree N° 728 had been retroactively applied to him.

10. The petitioner also asserts that once the collective dismissal process began before the Ministry of Labor, the latter issued Directorial Resolution, N° 208-93-DSPC, of December 15, 1993, rejecting the dissolution of the employment contracts. Subsequently, in Directorial Resolution N° 015-94-DPSC of January 31 1994, the Ministry of Labor partially approved the request to terminate the employment contracts of a certain number of workers, including the petitioner among them. This was upheld by Directorial Resolution N° 017-94-DPSC of February

21, 1994 finalizing the administrative procedures. On February 24, 1994, the Bank sent a letter to the petitioner notifying him of this decision and instructed him to proceed to collect his social benefits.

11. The petitioner contested the aforementioned resolutions with an action for reinstatement before the Fifteenth Labor Court [Décimo quinto Juzgado de Trabajo] of Lima (file N°1876-94) and in a contentious-administrative proceeding before the Second Chamber for Employment [Segunda Sala Laboral] of Lima (file N °206-94), to no avail. The petitioner also contends that the specialized chamber lost his file with no explanation, to his detriment.

12. The petitioner indicates that other workers who had been dismissed, also challenged the Resolutions emitted by the Ministry of Labor that authorized the collective dismissals in contentious-administrative proceedings and were successful in having Resolutions 015-94-DPSC and 017-94-DPSC declared null and void.

13. On February 2000, the petitioner filed an amparo suit seeking his reinstatement, which he pursued before the Specialized Public Law Court [Juzgado Especializado de Derecho Público] and the Constitutional Court, both of which upheld the termination of the petitioner's contracts.

14. The petitioner contends that by declaring Directorial Resolutions 015-94-DPSC and 017-94-DPSC null and void, the Judiciary automatically has left in force Resolution No. 208-93-DPSC rejecting the termination of employment contracts by the Bank. That means that Directorial Resolution No. 208-93-DPSC remains in effect today and therefore, the petitioner contends that he has every right to be reinstated to his job.

b. Position of the State

15. The State asserts that the petitioner failed to exhaust domestic remedies in accordance with Article 46 of the Convention. The State contends that Mr. Luis Edgar Vera Flores failed to pursue the legal actions required in the domestic jurisdiction, allowed deadlines for filing the appropriate actions to expire and, on other occasions, allowed his lawsuits to be declared abandoned. It adds that the resolutions and verdicts handed down against the petitioner do not constitute a denial of justice since at all times the State respected due process guarantees and provided access to the remedies available under the Constitution and laws of the State of Peru.

16. First, with respect to the improper application of Legislative Decree 728 and the alleged infringement of the principle of non-retroactivity of laws, the State asserts that the petitioner has neither demonstrated that he initiated an action to challenge the alleged retroactive application of Legislative Decree 728, nor included a complaint in that regard in the legal actions initiated by him. Here, the State indicates that if the petitioner believed that Legislative Decree 728 had been applied retroactively, he could have filed an amparo action under Law 23506 –which was in force at that time. In light of the foregoing, the State contends that the petitioner has not exhausted domestic remedies for the purposes of requesting that the IACHR conclude that the Peruvian State has violated his right to protection against the retroactive application of the law.

17. Moreover, the State asserts the non-exhaustion of domestic remedies by the petitioner because, in order to demand his reinstatement at the Bank, he should have filed suit before the contentious-administrative Court.

18. With respect to the remedies used by the petitioner, the State claims that the remedy for reinstatement filed by the petitioner on March 20, 1994, contesting Directorial Resolutions 015-94-DPSC and 017-94-DPSC, was declared abandoned by an October 18, 1995 Resolution issued by the 15th Labor Court of Lima. The States indicates that according to Peruvian law, a resolution declaring a proceeding abandoned may be appealed. Moreover, when there has been a declaration of abandonment the affected party has the opportunity to initiate another proceeding one year following such a ruling. According to the State, the petitioner did not pursue the remedies available to him to reactivate that proceeding.

19. With respect to the alleged misplacement of file N° 206-94 related to the Contentious-Administrative action brought by the petitioner, the State contends that the petitioner has failed to duly prove the existence of the file in question. According to the State, the presentation of a copy of his December 3, 2002 request to the Chief of the Central Archive of the Superior Court of Lima is not suitable evidence, because it was presented approximately seven years after the fact. The State also points out that, when a file is lost, the Code of Civil Proceedings provides for the possibility of the Re-composition of the Files, *Recomposición de Expedientes*, in which the Judge must order a preliminary investigation, with the knowledge of the Judicial Oversight Office, order the replacement of the file, either at its own initiative or at the request of one of the parties. The State claims that the petitioner took no action whatsoever with regard to the alleged misplacement of file 206-94.

20. With regard to the proceeding for execution of the Administrative Resolution brought by the petitioner before the Third Labor Court that concluded with the rejection of the complaint, the State asserts that the Court adhered strictly to procedural norms when it ruled that the complaint was unfounded. The State explains that the Judgment declaring the nullity of the aforementioned Resolutions No. 015 and 017-94- DPSC was the result of various lawsuits brought by other workers—in the same situation as the petitioner – which were later combined. As a result of that judgment, the workers who participated in that suit had recourse to a proceeding for execution of judgment for the purpose of requesting their reinstatement.

21. In this regard, the State asserts that the judgment declaring the nullity of the Directorial Resolutions in question, did not order the automatic reinstatement of the laid off workers; they were obliged, therefore, to request such reinstatement in the Bank through a proceeding for execution of judgment. The State adds that in accordance with procedural and administrative norms in Peruvian law, only those with a right recognized in the executable document—such as the Judgment declaring the nullity of the aforementioned Directorial Resolutions—is eligible to pursue a proceeding for execution. The State continues that, in light of the foregoing, the 18th Labor Court of Lima, in a March 4, 1998 Resolution, found that the petitioner, by failing to demonstrate that he was a plaintiff in the Contentious Administrative lawsuit, is not eligible to participate in the proceeding for execution.

22. With respect to the amparo action lodged by the petitioner against the Central Reserve Bank of Peru seeking reinstatement to the position he held prior to his dismissal, the Constitutional Court, in a July 24, 2002 decision, found that the suit did not meet the requirements established for pursuing that remedy, specifically, the deadline for filing. Hence, the Constitutional Court declared the remedy time-barred under Law 23506 of Habeas Corpus and Amparo.

23. In light of the foregoing, the State contends that there was no violation of the right to due process guarantees or the right to judicial protection. It asserts that the petitioner filed several lawsuits that were handled through the procedures established by Peruvian law and that he had the opportunity to challenge them at the time.

24. Moreover, in the State's view, since the remedies applied by the petitioner were rejected on reasonable procedural grounds, domestic remedies were not appropriately exhausted in accordance with 46(1)(a) of the Convention.

25. Finally, the State indicated that, in a communication dated February 18, 2005, the Central Reserve Bank forwarded documentation showing that the petitioner has collected his social benefits. It reports that under Peruvian law, collecting social benefits constitutes proof of consent by both parties to terminate an employment relationship.[FN2]

[FN2] Article 55 of Leg. Decree 728, State Report 107-2005-JUS/CNDH, para. 30.

26. The State asserts that the petitioner has given his consent to terminate his employment relationship with the Bank, for which he is not in a position to claim the illegality of his termination before the Commission. The State contends that the foregoing also demonstrates that the facts provided do not constitute a violation of any of the rights protected by the Convention, which constitutes grounds for inadmissibility in accordance with Article 47 (b) of the Convention.

IV. ANALYSIS

A. The Commission's Competence *ratione materiae*, *ratione personae*, *ratio loci* and *ratione temporis*

27. The Commission is competent to examine the subject matter of this complaint in that it refers to an alleged violation of a right enshrined in Article 25 of the American Convention.

28. The petitioner is entitled under Article 44 of the American Convention to lodge petitions before the IACHR. The petition indicates as the alleged victim an individual with respect to whom Peru has undertaken to respect and ensure the rights enshrined in the American Convention. Therefore, the Commission is competent *ratione personae* to examine the petition.

29. The Commission is competent *ratione loci* to take up the petition insofar as it claims violations of rights protected in the American Convention that allegedly occurred within the territory of a State party to that treaty.

30. The IACHR is competent *ratione temporis* inasmuch as the claims set forth in the petition took place when the obligation to respect and ensure the rights established in the American Convention was in force for the Peruvian State. The Peruvian State ratified the Convention on July 28, 1978. The instant petition refers to events that took place following the date of ratification of the American Convention.

B. Admissibility requirements of the petition

1. Exhaustion of domestic remedies

31. Article 46 of the American Convention stipulates that, for a case to be considered admissible, “the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.” As the Inter-American Court of Human Rights has ruled,

Those principles refer not only to the formal existence of such remedies, but also to their adequacy and effectiveness, as shown by the exceptions set out in Article 46(2).[FN3]

[FN3] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, para. 63.

32. Therefore, it must first be determined whether a remedy was available to address the issue at hand in the domestic venue, and whether that remedy was adequate and effective.

33. According to the State, the petitioner, following the collective dismissals in February 1994 in which he was included, filed a reinstatement suit and later dropped the case. In 1998, four years after he had been terminated, he tried to join the proceeding for execution of a judgment initiated by Mr. Hugo Bravo León et al, and was excluded there from in an express ruling from the courts, because he had not participated in the contentious-administrative suit that was being executed by that proceeding. Two years later, he filed an amparo suit, which was declared unfounded because the statute of limitations had expired.

34. The information submitted by the petitioner indicates that the contentious-administrative suit was available at the time of the events and was used successfully by others in a situation similar to the petitioner’s. On August 5, 1997, for example, the Chamber for Employment of the Superior Court of Justice of Lima ruled on the suit brought by Hugo Bravo León and others against the resolution issued by the labor authority that had authorized the collective dismissal. The ruling found that the complaint was well founded and declared Resolutions N 015-94-DPSC and N° 017-94-DPSC null and void. Finally, the IACHR considers that based on the information available to it, the contentious-administrative remedy is in effect for the parties to the case and

not erga omnes as the petitioner alleges. It concludes, therefore, that an available and effective remedy was in place to resolve an irregular termination such as that claimed by the petitioner.

35. The Inter-American Court has established that

If a State which alleges non-exhaustion proves the existence of specific domestic remedies that should have been utilized, the opposing party has the burden of showing that those remedies were exhausted or that the case comes within the exceptions of Article 46(2).[FN4]

[FN4] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, para. 60.

36. In the instant case, the petitioner has failed to demonstrate the due exhaustion of the remedies or that his situation fits the aforementioned exceptions. The petitioner claims that he did act within the legal time period to contest the authoritarian Resolutions, once he had been terminated on February 24, 1994, creating the contentious-administrative file N° 206-94-A.C.A. before the Second Chamber for Employment of Lima that was subsequently declared abandoned and the file lost, and that according to a letter dated December 3, 2002, he requested an explanation as to why the file could not be found. Nonetheless, he provides no evidence to substantiate this loss before the IACHR. Moreover, the petitioner does not demonstrate that the alleged misplacement occurred before the resolution declaring the abandonment of the action was handed down.

37. The Commission concludes that the contentious-administrative action constituted an available and effective remedy that was not appropriately utilized by the petitioner for reasons that do not give rise to State responsibility. The petitioner did not make timely and adequate use of the domestic remedies available to him and therefore has failed to meet the requirements for the Commission to admit the instant complaint under Article 46(1)(a) of the American Convention.

38. In light of the foregoing, there is no need for the Commission to examine the other admissibility requirements.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant case inadmissible due to non-exhaustion of domestic remedies.
2. To notify the parties of its decision.
3. To publish this report and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in Washington, D.C., on the 24th day of October 2005. (Signed): Clare K. Roberts, President;

provided by worldcourts.com

Paulo Sérgio Pinheiro, Second Vice-President; Commissioners Evelio Fernández Arévalos, José Zalaquett, Freddy Gutiérrez, and Florentín Meléndez.