

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 107/06; Petition 12.318
Session: Hundred Twenty-Sixth Regular Session (16 – 27 October 2006)
Title/Style of Cause: Jorge Teobaldo Pinzas Salazar v. Peru
Doc. Type: Decision
Decided by: President: Evelio Fernandez Arevalos;
First Vice-President: Paulo Sergio Pinheiro;
Second Vice-President: Florentin Melendez;
Commissioners: Freddy Gutierrez Trejo, Paolo Carozza, Victor E. Abramovich.
Dated: 21 October 2006
Citation: Pinzas Salazar v. Peru, Petition 12.318, Inter-Am. C.H.R., Report No. 107/06, OEA/Ser.L/V/II.127, doc. 4 rev. 1 (2006)

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I. SUMMARY

1. On November 11, 1998, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission", "the Commission" or "the IACHR") received a petition filed by Mr. Jorge Teobaldo Pinzas Salas (hereinafter "the petitioner") invoking the responsibility of the Republic of Peru (hereinafter "Peru", "the Peruvian State" or "the State") for noncompliance with the judgment of amparo (judgment upholding protection guarantees) handed down on August 21, 1992, by the Supreme Court of Justice of Peru, which ordered the reinstatement of Mr. Jorge Pinzas Salas in the National Police of Peru, returning him to active status.

2. The petitioner claims that the State is responsible for violating the rights enshrined in Articles 3 (right to juridical personality), 8 (right to a fair trial), 14 (right of reply), and 25 (right to judicial protection) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") under its Article 1.1. The petitioner also claims that his appeal is admissible since he exhausted the remedies available to him under domestic law in seeking restoration of the rights that he claims were violated. The State, meanwhile, requested the IACHR to shelve the instant petition, claiming that a Supreme Decision would be issued to overturn the decision that led to Mr. Pinzas Salazar's retirement, so that its practical effect would be that the grounds for his appeal would cease to exist, in accordance with the provisions of Article 48.1.b of the American Convention on Human Rights.

3. In the present report, the Commission analyzes the information available in light of the American Convention and concludes that the petitioner did not exhaust domestic remedies in accordance with the provisions set out in Article 46.1.a. Therefore, it decides that the petition is inadmissible under Article 47.a and b of the American Convention, decides additionally to

transmit the report to the parties, and directs that it be published in the annual report of the Commission.

4. Therefore, it decides that the petition is inadmissible under Article 47.a of the American Convention, decides to transmit the report to the parties, and directs that it be published in the annual report of the Commission.

II. PROCESSING BY THE COMMISSION

5. The petition was submitted to the Commission on November 11, 1998. On August 17, 2000, the Commission opened the case under number 12.318 and transmitted the pertinent portions of the petition to the Peruvian State, with a period of 90 days in which to submit information, in conformity with the regulations in effect at the time that the said communication was transmitted.

6. On March 29, 2001, the State presented its response, which was transmitted to the petitioners by means of a communication dated May 25, 2001, with a period of 30 days to submit observations.

7. By means of a communication dated June 8, 2001, received by the IACHR Executive Secretariat on June 28, 2001, the petitioner presented his written observations on the State's reply. These were transmitted to the State on August 14, 2001.

8. On June 13, 2005, and July 25, 2005, the petitioner submitted additional information concerning the incidents related in his petition, which was transmitted to the State by means of a communication dated January 27, 2006, with a period of 30 days in which to submit any observations that it deemed appropriate. The State declined to submit observations on the additional information furnished by the petitioner.

III. POSITIONS OF THE PARTIES

A. Position of the petitioner

9. The petitioner claims that on July 31, 1990, when he was Commander of the National Police of Peru, he was arbitrarily placed in retirement status on the ground of restructuring of the officer corps by means of Supreme Decision No. 314-90-IN-DM.[FN1]

[FN1] Petitioner's communication dated November 11, 1998.

10. In light of this situation, the petitioner claims that he lodged a remedy of amparo and a request for precautionary measures with a view to requesting his reinstatement in the National Police. In his summary of the judicial process pursued, the petitioner points out that on August 21, 1992, the Constitutional Law Chamber of the Supreme Court of Peru ordered his immediate reinstatement in the post with full recognition of his rights and privileges. Nevertheless, the

petitioner claims that the aforesaid judgment of the Supreme Court has not been implemented and that, accordingly, up to the time of the present report, he has not been reinstated in the post that he held as Commander of the National Police and his pertinent rights and privileges have not been recognized.

11. From the narrative in the original petition,[FN2] it is clear that the petitioner believes that the reasons for his dismissal were political rather than legal. Specifically, the petitioner claims that his dismissal was an act of retaliation by the government of then President Alberto Fujimori as a consequence of various investigations and arrests that he carried out against perpetrators of serious human rights violations. The petitioner also states that his career was conclusively cut short since, on the date of his dismissal, he was scarcely one month away from taking an examination for promotion to the rank of colonel. He also states that even had there been no examination, his remuneration at retirement would have been the same as that which is granted to persons holding such rank.

[FN2] Ibid.

12. By means of the additional information provided,[FN3] the petitioner brought to the attention of the IACHR the approval of Supreme Decision No. 722-2001-IN-PNP, dated July 10, 2001, whereby he was retroactively reinstated on active duty in the National Police as of August 21, 1992; this decision also provided that he should refund to the State all the economic benefits granted to him during the retirement period, together with the interest prescribed by law on the payments that he received. He also brought to the Commission's attention the subsequent issuance of Supreme Decision No. 737-2001-IN-PNP, dated July 11, 2001, which provided for his retirement inasmuch as he had reached the cut-off age for retirement on July 21, 1995.

[FN3] Petitioner's communication dated May 31, 2005, received by the Executive Secretariat on June 13, 2005, and communication dated July 8, 2005, received by the Executive Secretariat on July 25, 2005.

13. The petitioner claims that he repeatedly paid visits to the various offices of the National Police seeking information on what assets he was required to refund to the State in order to comply with the aforesaid decisions. Nevertheless, the petitioner states that by means of National Police Administrative Decision No. 5049-2002-DIRPER-PNP, dated June 12, 2002, his petitions were declared inadmissible; in light of this decision, he states that the Supreme Court's judgment of amparo of August 21, 1992, remains unimplemented.[FN4]

[FN4] Administrative Decision No. 5049-2002-DIRPER-PNP states, in its pertinent portion, that:

“Whereas, following administrative proceedings, the appellant's petition has been deemed inadmissible, the previous Supreme Decision does not require recognition of the time that he

spent in retirement as a period of service; and, therefore, in conformity with Arts. 31 and 32 of Decree-Law No. 19846 (Police-Military Pensions Law) and consistent with Arts. 56 and 57 of the Regulations thereto, for services to be recognized as pensionable, the person concerned must have worked full-time and the services must have been duly remunerated, an assumption that does not apply to the aforesaid Officer."

B. Position of the State

14. The Peruvian State, in its observations,[FN5] presented the draft of a Supreme Decision that would partially rescind Supreme Decision No. 0314-90-IN/DM, of July 3, 1990, returning Mr. Pinzas Salazar to "active" status by means of a warrant, as stipulated by the Supreme Court of Justice in its judgment dated August 21, 1992.

[FN5] National Human Rights Council, Report No. No 33-JUS/CNDH-SE, March 27, 2001.

15. The State claimed that once the aforementioned Supreme Decision was published in the Diario Oficial (Official Journal), the grounds for the instant petition would cease to exist, since the decision's practical effect would be to return National Police Commander Jorge Pinzas Salazar to active status.

16. Accordingly, in its communication, the State requested the IACHR to permanently shelve the petitioner's appeal, in conformity with Article 48.1.b of the American Convention on Human Rights, contending that with the aforementioned decision, the grounds that gave rise to the petition would disappear.

17. Lastly, it should be noted that the State declined to submit observations on the additional information transmitted by the petitioner concerning noncompliance with Supreme Decisions No. 722-2001-IN-PNP and No. 737-2001-IN-PNP, which, respectively, rescinded his placement in retirement status because of restructuring of the officer corps, with recognition of the corresponding rights and privileges, and ordered his placement in retirement status because of his having reached the cut-off age, pursuant to the judgment of amparo of the Supreme Court of Justice, dated August 21, 1992.

IV. ANALYSIS OF ADMISSIBILITY

18. The Commission will now analyze the requirements for admissibility of a petition as set out in the American Convention.

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

19. The petitioner is, in principle, empowered by Article 44 of the American Convention to submit petitions to the Commission. The petition describes as an alleged victim a natural person

with respect to whom the Peruvian State undertook to respect and guarantee the rights embodied 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 on which the respective instrument of ratification was deposited. Therefore, the Commission is competent *ratione personae* to consider the petition.

20. The Commission is also competent *ratione loci* to consider the petition, since it alleges violations of rights protected in the American Convention that allegedly occurred under the jurisdiction of the State. The Commission is competent *ratione temporis* to examine the claim since the obligation to respect and guarantee the rights protected in the American Convention was already incumbent on the Peruvian State on the date on which the incidents invoked in the petition are alleged to have taken place. Lastly, the Commission is competent *ratione materiae* because the petition complains of possible violations of human rights protected by the American Convention.

B. Requirements for admissibility of a petition

1. Exhaustion of domestic remedies

21. Article 46.1.a of the American Convention provides that, for a complaint submitted to the Inter-American Commission to be admissible in conformity with Article 44 of the Convention, the remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to enable the national authorities to examine an alleged violation of a protected right and, if appropriate, to settle it before it is reviewed by an international body.

22. In the instant case, the petitioner maintains that he has exhausted the remedies under domestic law and that the August 21, 1992 judgment of the Constitutional and Social Law Chamber of the Supreme Court, which ordered his reinstatement in the National Police of Peru, has not been implemented in practice. Specifically, the petitioner invokes continuing noncompliance with the Supreme Court judgment dated August 21, 1992 since, although two National Police Supreme Decisions, dated July 10 and 11, 2001, respectively, were issued following that judgment, ordering his reinstatement and his subsequent retirement because of his having reached the cut-off age, Administrative Decision No. 5049-2002-DIRPER-PNP was then issued on June 12, 2002, stating that it was impossible to implement those decisions. The State, meanwhile, declared that the Supreme Decision of June 10, 2001 complied with the Supreme Court judgment ordering his reinstatement, and that the petition submitted to the IACHR should therefore be shelved.

23. It is clear from the evidence in the record that Mr. Pinzas Salazar was released from his duties on July 31, 1990, by means of Supreme Decision No. 314-90-IN/DM, which ordered that he be moved from active to retired status because of "restructuring".[FN6] Subsequently, Mr. Pinzas Salazar lodged a remedy of amparo, which was decided in the final instance by a favorable judgment of the Constitutional and Social Chamber of the Supreme Court, dated July 22, 1992, which declared "the measures ordered by Supreme Decision No. 314-90-IN/DM [to be] inapplicable to the petitioner" and, consequently, ordered his reinstatement in active status,

"with recognition of his economic rights, privileges, and other benefits inherent in active duty status."[FN7]

[FN6] Judgment of the Constitutional and Social Law Chamber of the Supreme Court, of July 22, 1992, annexed to the petitioner's communication dated November 11, 1998.

[FN7] Ibid.

24. On July 10, 2001, by means of Supreme Decision No. 722-2001-IN-PNP dated July 10, 2001, and pursuant to the provisions of the Supreme Court judgment, Supreme Decision No. 0314-90-IN/DM, of July 31, 1990, was rescinded. That decision ordered Mr. Pinzas Salazar's retroactive reinstatement on active duty in the National Police as of August 21, 1992, his re-listing in the respective roster, and recognition of his economic rights, privileges, and other benefits inherent in active duty status.[FN8] On that occasion, Mr. Pinzas was also requested to refund to the State all the economic benefits that had been granted to him upon his separation from active duty, together with the interest prescribed by law.[FN9] Supreme Decision No. 737-2001-IN-PNP was subsequently issued on July 11, 2001, providing for Mr. Pinzas Salazar's retirement inasmuch as he had reached the cut-off age for that status on July 21, 1995.[FN10]

[FN8] Supreme Decision No. 0722-2001-IN/PNP of July 10, 2001.

[FN9] Ibid.

[FN10] Supreme Decision No. 0737-2001-IN/PNP of July 11, 2001.

25. Here the Commission considers it pertinent to point out that the issuance of Supreme Decision No. 722-2001-IN-PNP, dated July 10, 2001, substantially complied with the judgment issued by the Constitutional and Social Law Chamber of the Supreme Court on July 22, 1992, since it provided for the alleged victim's return to active duty. Nevertheless, it should also be noted that the alleged victim's situation changed on July 11, 2001, owing to Supreme Decision No. 737-2001-IN-PNP, which placed Mr. Pinzas Salazar in retirement because he had reached the cut-off age.

26. The Commission also observes that Mr. Pinzas Salazar continued to assert his rights under domestic law by requesting that his pension be updated. That request was rejected by means of Administrative Decision No. 5049-2002-DIRPER-PNP of June 12, 2002, which stated, on the basis of Articles 31 and 32 of the Police-Military Pensions Law, consistent with Articles 56 and 57 of the regulations thereto, that "for services to be recognized as pensionable, the person concerned must have worked full-time and the services must have been duly remunerated," an assumption that was found not to apply to Mr. Pinzas Salazar.[FN11]

[FN11] Administrative Decision No. 5049-2002-DIRPER-PNP of June 12, 2002.

27. The Commission considers that for it to examine the facts relating to the pension and/or retirement rights that might accrue to Mr. Pinzas Salazar as a result of his reinstatement on active duty in the National Police and his subsequent retirement because of having reached the cut-off age, he should have turned first to the corresponding judicial bodies under domestic law to challenge the aforementioned Administrative Decision No. 5049-2002-DIRPER-PNP of June 12, 2002, thereby exhausting suitable remedies. This situation did not occur in the instant case.

28. In light of the foregoing considerations, the Commission considers that the petitioner did not demonstrate due exhaustion of the remedies available under domestic law, nor did his situation dovetail with the aforementioned exceptions. Indeed, the petitioner presented no information as to why he did not challenge Administrative Decision N° 5049-2002-DIRPER-PNP dated June 12, 2002. The Commission considers that an administrative law appeal constituted an available and effective remedy that was not used appropriately by the petitioner for reasons that do not entail the State's responsibility. Accordingly, the petitioner did not make adequate and timely use of available domestic remedies, thus failing to comply with the requirements enabling the Commission to admit the instant complaint in accordance with Article 46.1.a of the American Convention.

29. Accordingly, the Commission concludes that the petitioner did not make adequate and timely use of available domestic remedies, thus failing to comply with the requirements enabling the Commission to admit the instant complaint in accordance with Article 46.1.a of the American Convention.

2. Duplication of procedures and res judicata

30. The Commission understands that the subject of the petition is not currently pending in another international proceeding, nor reproduces a petition previously studied by this or by another international organization. Therefore, the requirements set forth in articles 46.1.c and 47.d of the Convention have been met.

3. Characterization of the facts

31. The Commission considers that the petitioner's exposition refers to facts that, if proved, do not characterize a violation of article 3 (right to juridical personality), 8 (right to a fair trial), 14 (right of reply), nor the right to judicial protection guaranteed by article 25 of the American Convention, in relation to the obligation to respect rights set forth by article 1.1 of the Convention.

32. In this respect, the Commission observes that based upon the information submitted by the parties, the State, pursuant to the provisions of the Supreme Court judgment, rescinded Supreme Decision No. 0314-90-IN/DM, of July 31, 1990, issuing Supreme Decision No. 722-2001-IN-PNP, on July 10, 2001, which ordered the retroactive reinstatement of Mr. Pinzas Salazar to active duty in the National Police as of August 21, 1992.

33. Furthermore, it is pertinent to add that, Commission considers that the facts alleged by the petitioner relating to the pension and/or retirement rights in recognition of his reinstatement

to active duty in the National Police, are not are subject to review by the IACHR in the present case given that, as established in the section on the exhaustion of domestic remedies, the petitioner did not make use of those remedies with respect to this situation.

34. In light of the foregoing, the Commission concludes that the facts alleged do not tend to characterize a violation of rights guaranteed by the American Convention and therefore the petition must be declared inadmissible.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant case inadmissible because of failure to exhaust the remedies under domestic law.
2. To notify the parties of this decision.
3. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Washington, D.C., on the 21st day of the month of October, 2006.
(Signed): Evelio Fernández Arévalos, President; Paulo Sérgio Pinheiro, First Vice-President; Florentín Meléndez, Second Vice-President; Freddy Gutiérrez Trejo, Paolo Carozza and Víctor E. Abramovich, Commissioners.