

WorldCourts™

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 44/09; Petition 12.161
Session: Hundred Thirty-Fourth Regular Session (16 – 27 March 2009)
Title/Style of Cause: *Ciro Abdias Bodero Arellano v. Peru*
Doc. Type: Decision
Decided by: President: Luz Patricia Mejia Guerrero;
First Vice President: Victor Abramovich;
Second Vice President: Felipe Gonzalez;
Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Florentin Melendez, Paolo Carozza.
Dated: 27 March 2009
Citation: *Bodero Arellano v. Peru*, Petition 12.161, Inter-Am. C.H.R., Report No. 44/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)

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. On April 15, 1999 the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition lodged on his own behalf by *Ciro Abdías Bodero Arellano* (hereinafter “the petitioner” or “the alleged victim”) in which he alleges that the Republic of Peru (hereinafter “Peru,” “the State,” or “the Peruvian State”) violated his rights recognized in Articles 5, 7, 8, 10, and 17 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”), as a result of his deprivation of liberty in 1993 for 13 months, during a criminal trial that was held in violation of his right to due process, as well as his inability to receive wages which he was unable to earn from the time he was detained until the judgment of acquittal was issued.

2. The State, for its part, indicated that it was not aware of the date on which the initial petition was received, which hindered it from filing a preliminary objection on the basis of expiration of the time period. The State argued that, in any case, if the petition was lodged in 1999, that would have been more than six months after the events had occurred; however, if the petition had been lodged in timely fashion—in 1994 or 1995—the delay attributable to the Commission in processing the petition would have rendered it inadmissible.

3. After analyzing the positions of the parties, the Commission concluded that it does have competence to consider the matter presented to it. However, the petition is inadmissible because of failure to comply with the requirement to exhaust domestic remedies set forth in Article 46(1)(a) of the American Convention. Therefore, the Commission has determined to notify the parties of this decision, publish this Report on Inadmissibility, and include it in its Annual Report.

II. PROCESSING BY THE IACHR

4. The Commission received the initial petition on April 15, 1999. On April 29, 1999 the petitioner submitted additional information. The complaint was registered as case number 12,161.

5. On June 7, 1999 the Commission transmitted the relevant parts of the petition to the State and requested that it submit a reply within three months. On September 7, 1999 the State submitted its observations, which were remitted to the petitioner on November 8, 1999. The petitioner was asked to submit any observations he might have within one month.

6. On December 14, 1999 the petitioner submitted his observations, which were transmitted to the Peruvian State on March 22, 2000, with a request that the State submit any observations it might have within one month.

7. On May 1 and June 5, 2000, the petitioner submitted additional information.

III. POSITIONS OF THE PARTIES

A. The petitioner

8. The petitioner indicated that on June 3, 1993, while he was working as a math professor at the "Roca Carrera de Martos" National School in Piura, he was detained by members of the police in the State Security Department. The petitioner mentioned that he was deprived of his liberty for 13 months, until a judgment of acquittal was finally issued in his favor. He added that while he was in detention, his family was completely abandoned.

9. The petitioner indicated that in 1992 the Peruvian government issued Decrees 25,475 and 25,499 and their regulations, which established provisions applicable to persons charged with terrorism. The petitioner alleged that these provisions violated the principles of the Constitution because they caused that "if an individual were merely accused, he was ordered to be detained for several months."

10. The petitioner indicated that while he was deprived of his liberty, the Piura Regional Bureau of Education issued Resolution 1116 on October 21, 1993, which suspended him from receiving pay from August 1 of that year through the end of the trial. He said that once he was released on June 28, 1994, he appealed to that Regional Bureau requesting payment of the unpaid wages. On February 14, 1995 the Regional Bureau issued Resolution 162 denying his request. The petitioner indicated that this resolution was upheld by the Chairman of the Regional Government, leaving his family in an even more dire economic situation.

11. The petitioner alleged that these facts constitute violations of his rights to personal liberty, to humane treatment, to a hearing before a competent tribunal, to compensation, and protection of the family.

12. From the annexes provided by the petitioner it is seen that on March 22, 1995 he filed an appeal of Resolution No. 0162-95, issued by the Piura Regional Bureau of Education on February 14, 1995. The Transitory Council of Regional Administration ruled on said appeal on September 25, 1995, indicating “(...) while the reasons for the absences of Professors Bodero and (...) were beyond their control, (...) said reasons were not the responsibility of the Regional Bureau of Education but rather the Judicial Branch which had ordered the arrest. It is to this body that the claims should be addressed.” This resolution also determined that the administrative procedure had been exhausted.[FN1]

[FN1] Transitory Council of Regional Administration. Chairman’s Resolution No. 383-95-CTAR-REGION GRAU-P. September 25, 1995.

13. The petitioner indicated that he did not challenge this resolution in the judicial branch, nor did he go to the courts to request compensation for damages or losses, because the domestic legislation requires the payment of court fees when filing a civil suit. He added that with his “meager professor’s salary of less than US\$150,” and since he was supporting his three children in school, it was impossible for him to exercise his right to litigate. This situation was made worse by the fact that he had been deprived of his liberty for more than a year during which he was unable to receive any income.

14. Additionally, the petitioner argued that the general climate of arbitrary arrests and acts of persecution against persons suspected of acts of terrorism, were evidence of the instability of the legal system and lack of guarantees for due process.

15. As for the argument by the State that the complaint was lodged after the deadline, the petitioner indicated that for a long time, even after he regained his liberty, he was the object of persecution, apparently by the National Intelligence Service or the National Police, in order to verify whether anything he did was linked to terrorism. He indicated that because of this, he was afraid to seek intervention by the international human rights agencies.

16. In a note dated May 1, 2000, the petitioner informed the Commission that he was residing in another country as a refugee because of the continuous surveillance he was being subjected to by the National Intelligence Service. He indicated that his situation was still precarious because it was impossible to procure employment and because of the disruption to his family, social, work, and cultural life caused by his departure from Peru. He also submitted several press clippings which he considered to be evidence that “subversive groups in Peru are once again a living force,” and therefore a new threat to citizens’ rights under the excuse of national security.

B. The State

17. As a preliminary matter, the Peruvian State indicated that the transmission of the relevant parts of the complaint to the parties, which excluded the date on which the complaint had been lodged, hindered its right to file an objection on the basis of expiration of the time period.

18. The State indicated that even without knowing the filing date, it was reasonable to assume that the petition had been filed past the deadline. In this regard, the State proposed two hypothesis. In the first, it indicated that if the petition had been lodged the same year in which it was transmitted to the State, that is, 1999, the six-month deadline had long passed, since these events occurred in 1994. In the second hypothesis, the State indicated that if the petition had been lodged in timely fashion, that is, in 1994 or 1995 when the alleged events occurred, “it is not legally valid for the IACHR to have considered more than four years to be a reasonable time for acknowledging the complaint and transmitting the relevant parts on June 7, 1999.” The State argued that in the latter case, the Commission would have caused an unjustified delay, to the detriment of the State’s right to present a defense, and that this would lead to a finding that the petition is inadmissible.

19. The State argued that while neither the American Convention nor the Rules of Procedure of the IACHR indicate what constitutes reasonable time for the Commission to proceed, “legal practice establishes that reasonable time cannot logically exceed the six-month deadline established for expiration of the time period; otherwise, this would hinder the Peruvian State’s right to present its defense by making a preliminary objection” on the basis of untimely filing of the petition. The State also indicated that this would constitute a violation of the petitioner’s right to prompt recourse.

IV. ANALYSIS OF ADMISSIBILITY

A. Prior matter

20. Before analyzing the Commission’s competence and the admissibility of this petition, the Commission deems it necessary to clarify the object of the complaint. In his initial submissions, the petitioner indicated that the alleged facts of the case revolved around his deprivation of liberty, his criminal trial, and the wages he was not able to receive while he was in custody. In subsequent briefs the petitioner mentioned some acts of persecution against him, without specifying the circumstances of time, means, or place in which these alleged acts may have occurred. The Commission understands that these alleged acts were mentioned by the petitioner in order to provide context to his allegations, and they are not the subject of this petition.

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

21. The petitioner is entitled under Article 44 of the Convention to lodge complaints on his own behalf. The alleged victim in this case was under the jurisdiction of the Peruvian State on the date the alleged acts occurred. The Peruvian State ratified the American Convention on July 28, 1978. Therefore, The Commission has competence *ratione personae* to review the petition.

22. The Commission has competence *ratione loci* to review the petition because it alleges violations of rights protected by the American Convention to have occurred within the territory of a State party to that treaty.

23. The Commission also has competence *ratione temporis* because the obligation to respect and guarantee the rights protected by the American Convention was already in effect for the State on the date when the facts stated in the petition allegedly took place.

24. Finally, the Commission has competence *ratione materiae*, given that the petition reports alleged violations of human rights protected by the American Convention.

C. Exhaustion of domestic remedies

25. Article 46(1)(a) of the American Convention provides that in order for a petition lodged before the Commission under Article 44 of the Convention to be admissible, 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 allow the national authorities to become aware of the alleged violation of a protected right and, if appropriate, afford them the opportunity to resolve the matter before it is brought to an international body.

26. The Peruvian State made no objection on the basis of failure to exhaust domestic remedies, which is considered to be a tacit relinquishment of the right to invoke that rule. The petitioner, in turn, indicated that he had filed a request for payment of lost wages through an administrative body, and that the result was unfavorable to him. He also alleged that because of his financial circumstances, he was prevented from filing for a judicial remedy. Despite the tacit waiver of this rule by the Peruvian State, the Commission deems it necessary to rule on the exhaustion of domestic remedies, according to the information available in the file.

27. The acts which the petitioner alleges violated his rights are: i) the deprivation of his liberty; ii) the criminal trial for the charges of terrorism, based on conditions that were allegedly incompatible with the due process guarantees of presumption of innocence and a competent judge; and iii) wages which he did not receive from the time of his arrest until the day he was released.

28. As for the first two points, the petitioner did not present detailed information on the criminal trial nor the judgment of acquittal. In any case, the Commission notes that the petitioner did not file any judicial action to obtain reparation for the damages which, according to him, were caused by his deprivation of liberty and the criminal trial against him. The argument put forth by the petitioner to justify this is that fees are charged for the filing of judicial proceedings and he lacked the financial means to pay them. While the Commission may take this circumstance into consideration on a case-by-case basis to analyze fulfillment of the requirement to exhaust domestic remedies, the petitioner limited himself to a generic mention of this without giving details on the unique circumstances of his situation, the relationship between these circumstances and the alleged inability to exhaust domestic remedies, nor any attempts he may have made to be exempted from paying the court fees or to obtain any kind of free legal assistance.

29. As for the third point, the Commission notes that the petitioner requested payment of lost wages before the Piura Regional Bureau of Education. The Bureau denied his request and that decision was upheld on appeal. The file shows that this decision constituted exhaustion of

administrative remedies. However, the petitioner did not file any administrative action to challenge this decision, nor did he present sufficient arguments to show that the charging of a court fee was sufficient to prevent him from exhausting domestic remedies, in the terms mentioned in the preceding paragraph.

30. In light of the above, the Commission concludes that this petition does not satisfy the requirement for exhaustion of domestic remedies established in Article 46(1)(a) of the American Convention.

31. The Commission will refrain from addressing the arguments presented by the Peruvian State regarding the other admissibility requirements set forth in the Convention based on separation of subject matter.

V. CONCLUSION

32. The Commission concludes that it has competence to examine this matter, however the petition is inadmissible because the petitioner failed to exhaust domestic remedies, as is required by Article 46(1)(a) of the American Convention. This is based on the arguments of fact and law detailed above.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this petition inadmissible.
2. To notify the petitioner and the State of this decision.
3. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on March 27, 2009. (Signed): Luz Patricia Mejía Guerrero, President; Víctor E. Abramovich, First Vice-president; Felipe González, Second Vice-president; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, Florentín Meléndez, and Paolo Carozza, Members of the Commission.