Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 42/09; Petition 443-03
Session:	Hundred Thirty-Fourth Regular Session (16 – 27 March 2009)
Title/Style of Cause:	David Jose Rios Martinez 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:	Rios Martinez v. Peru, Petition 443-03, Inter-Am. C.H.R., Report No. 42/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)

I. SUMMARY

1. On June 17, 2003, the Inter-American Commission on Human Rights (hereinafter also "the Inter-American Commission," "the Commission," or "the IACHR") received a petition filed by David Ríos Ríos (hereinafter also "the petitioner") on behalf of Mr. David José Ríos Martínez (hereinafter also "the alleged victim"), in which it is alleged that the Republic of Peru (hereinafter also "Peru," "the State," or "the Peruvian State") has not executed a judgment handed down on February 28, 1990, by the Third Civil Court of Lima. The judgment ordered the alleged victim to be reinstated as a member, with all rights and obligations, of the Mutual Association of Technicians and Lower Level Officers of the Peruvian Army (hereinafter also "the Association"), from which he had been arbitrarily expelled.

2. In its response, the State argued that the petition does not include violations of rights protected in the American Convention on Human Rights (hereinafter also "the American Convention," "the Convention," or "the ACHR"). The State also claimed the failure to exhaust domestic remedies established in Article 46.1.a of the Convention, arguing the failure to file a motion for annulment of fraudulent res judicata, an action for execution of judgment, and a motion for constitutional protection (amparo). The State also contended that the petitioner used the incorrect judicial mechanisms.

3. After analyzing the positions of both parties, the Commission concluded that it does have jurisdiction to hear the claim but that the petition is inadmissible due to the failure to comply with the requirement of exhaustion of domestic remedies established in Article 46.1.a of the American Convention. Thus, the Commission decided to notify the parties, publish this Report on Inadmissibility, and include it in its Annual Report.

II. PROCEEDINGS BEFORE THE COMMISSION

4. On June 17, 2003, the Commission received the initial petition, which was registered as number P 443-03.

5. On July 8, 2005, the Commission conveyed the relevant parts of the petition to the State, and in accordance with its Rules of Procedure, asked the State to respond within two months.

6. On September 8, 2005, the State requested an extension in which to present its response; this was granted for an additional one-month period.

7. On September 26, 2006, the State presented its response to the initial petition. This was conveyed to the petitioner on October 16, 2006, with a request that he present any relevant comments within one month.

8. On November 17, 2006, the petitioner presented his comments, which were sent to the State on March 21, 2007, with a request that it submit any relevant comments within one month.

9. On October 7, 2008, the petitioner asked the IACHR about the stage of his petition. On December 2, 2008, the IACHR informed him that the petition was in admissibility stage.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioner

10. The petitioner indicated that Mr. Ríos, as a member of the Association, was elected President at the national level for the 1981 to 1983 period. During this time he undertook the acquisition and construction of a Recreation Center for the staff of Lower Level Officers of Peru.

11. The petitioner held that in June 1987, based on his administration's management and in particular the purchase of the real estate on which to build the Recreation Center, he was expelled from the Association for alleged negligence in carrying out his duties. The expulsion led him to file a motion for amparo in December of that same year. This action was resolved in his favor on February 28, 1990, by the Third Civil Court of Lima, which ordered his reinstatement as a member with all rights and obligations. He indicated that this judicial authority was protecting the right to due process and the right to a defense, on the grounds that his expulsion did not follow the standards established in the Association's Statutes.[FN1] The petitioner noted that this decision was confirmed on June 5 of the same year by the Sixth Civil Division of the Superior Court and became final on June 26, 1990, when the Supreme Court of Justice rejected the Association's motion for annulment, on the grounds that it had been filed in an untimely manner.

[FN1] The decision establishes that "…the sanction imposed on the claimants has not only been carried out in an irregular manner, but the very standards established in the Association statute's

Rules of Procedure have not been followed, thus cutting off the right to a defense that every person should enjoy, even more so if in addition there are no records of the summary investigation required by the statute, and such a procedure cannot take the place of the agreement referred to on page five of the document. Based on these considerations, the position of the claimants having varied with the evidence produced subsequently, I declare the claim on the second page to be well-founded and thus find that the claimants should again acquire their membership status with the rights and obligations that correspond under the Statute, putting aside the right of the defendant to pursue corresponding actions in case there should be reasons for doing so…." Judgment of February 28, 1990, handed down by the Third Civil Court of Lima, provided by the State on September 26, 2006, in its response to the initial petition, in which it clarifies that the actual date of the judgment was February 19, 1990.

---

12. The petitioner indicated that three months later Mr. Ríos was reinstated as a member without being paid the mutual benefits owed to him, which according to the Association's statutes should have been paid as of April 1989.[FN2]

[FN2] Although Mr. David José Ríos was expelled in June 1987, in the initial petition he holds that he is owed mutual contributions only as of April 1989.

---

13. He indicated that on September 27, 1990, the alleged victim filed a complaint with the Membership Assembly against the Association's Council of Directors and Council of Oversight over "punishable negligence in carrying out their duties"; this action, according to the petitioner, led the Membership Assembly to expel Mr. Ríos for the second time, on December 7, 1993. The petitioner contended that notification of this decision was made six months after the fact in order to prevent the pursuit of any claim.[FN3]

[FN3] The petitioner does not mention which administrative or judicial procedures were prevented by the alleged untimely notification of the decision to expel him.

---

14. According to the petitioner, on July 20, 1994, he filed a complaint against the Association's legal representative for the offense against the public administration of resistance to authority, stemming from the failure to execute the judgment of February 28, 1990. This complaint was heard at the first and second instance, respectively, by the Twenty-Fourth Criminal Court of Lima and the Seventh Criminal Division of Lima, which found the legal representative criminally responsible. Regarding the final judgment, the petitioner noted that on July 24, 1997, Division C of the Supreme Court of Justice nullified the decision and absolved the legal representative of any responsibility.[FN4]

[FN4] The judicial ruling establishes: Whereas and Considering: That based on the evidence provided there are insufficient elements to find criminal responsibility against Jorge Luis

Shimabuku Miyagui in the unlawful matter, and that in any case there is doubt with regard to the matter, which works in his favor under the constitutional provision of in dubio pro reo… thus [the decision] is to absolve him… they declared there to be NULLITY in the judgment dated November 26, 1996; that they deferred set aside the conviction of Jorge Luis Shimabuku Miyagui for the offense of "AGAINST THE PUBLIC ADMINISTRATION—RESISTANCE TO AUTHORITY, injurious to the State…" Verdict of July 24, 1997, handed down by Division C of the Supreme Court, submitted with the initial petition of June 17, 2003.

---

15. According to the petitioner, the reporting judge who decided this last appeal was Mr. Alejandro Rodríguez Medrano, who was later imprisoned and convicted for alleged crimes committed during the government of Alberto Fujimori,[FN5] which leads to an assumption of the court's lack of impartiality in deciding the case. In the words of the petitioner, the judge acted in collusion by repudiating facts that had been proven through the courts.

[FN5] On June 17, 2003, the alleged victim added to the petition a newspaper clipping, which states: "The chief prosecutor, Nicanor de la Fuente, yesterday went on record regarding the responsibility of former judge Alejandro Rodríguez Medrano for the crimes of extortion and trafficking in influence, having pressured various magistrates to benefit particular interests linked to Vladimiro Montesino. The prosecutorial opinion was conveyed to the Supreme Court's Investigative Committee, from which it will be sent to the Special Supreme Court Division so that oral proceedings can begin against the controversial judge, who is accused of manipulating the courts of justice at his whim during the heyday of the former presidential adviser… According to the prosecutorial opinion, the magistrate under suspicion would manipulate judges' and magistrates' decisions to benefit particular interests, on the express orders of Vladimiro Montesinos."

---

16. The information provided in the initial petition shows that Mr. David José Ríos pursued three additional remedies.

17. The first was a request for restoration of the prior state of affairs, alleging failure to comply with the judgment as a result of the second expulsion. This appeal was resolved by the First Specialized Corporate Transitory Court of Public Law through a decision dated August 18, 1998, which rejected the case on the grounds that it had been filed late and had laid out facts different from those that formed the basis for the first appeal for amparo.[FN6]

[FN6] The resolution establishes that the motion for restoration filed by the petitioner "refers to a situation that arose subsequent to the proceedings in the case and that is being joined together with a second, different expulsion from the defendant institution, a new circumstance that does not fall within the limits of this concluded process and is separate from it, even more so if one considers that the request is of a manifestly untimely nature for the execution of the process, inasmuch as from the year 1993, when the actor's second expulsion took place, until April 25, 1997, when the document which copy is on page 501 of the file was presented, nearly four years

have passed without any petition having been formulated…. The aforementioned imposes the need for the actor with the jurisdictional precedent constituting res judicata to file the appropriate administrative and/or jurisdictional procedures, as the case may be, in order to broadly establish his right….” Resolution of August 18, 1998, issued by the First Specialized Corporate Transitory Court of Public Law, provided by the State on September 26, 2006, in its response to the initial petition.

---

18. The second appeal had to do with a contentious administrative action for annulment which corresponded to the First Specialized Corporate Transitory Court of Contentious-Administrative Matters. In a resolution issued September 9, 1998, that court rejected the appeal for exceeding the legally prescribed deadline.[FN7]

[FN7] Nothing is known about the administrative action demanded through this motion.

---

19. The third appeal had to do with a complaint filed on November 7, 1997, with the Office of Judicial Control against the magistrates of Division C of the Supreme Court of Justice. The Executive Committee of the Judiciary, through a resolution dated February 11, 1999, rejected the complaint on the grounds that it would imply reviewing jurisdictional actions through administrative proceedings.

B. Position of the State

20. The State argued that the petition presented before the IACHR does not include violations of rights enshrined in the American Convention and that therefore the Commission may not review the judgments handed down by the national courts within their own jurisdiction, applying due judicial guarantees.

21. The State contended that the petitioner has not complied with the provisions of Article 46.1.a of the Convention and Articles 31 and 32 of the Commission Rules of Procedure, given that there has been no prior exhaustion of domestic remedies due to not having followed correct procedures and having let the deadlines to file relevant procedural actions expire.

22. In this regard, the State indicated that the petitioner could have gone to the judiciary through a process established in the Code of Civil Procedures[FN8] for the execution of judgments, in order to enforce the terms of the June 5, 1990 decision regarding the payment of mutual entitlements.

[FN8] According to the State, Chapter III of the Code of Civil Procedures establishes procedures for executing judicial decisions. Article 713 indicates that final judicial decisions are executable documents which can be put into effect through a proceeding to execute judgment. State’s response to the initial petition of September 26, 2006.

---

23. Similarly, the State indicated that Peruvian law provides for a Motion for Annulment of Fraudulent Res Judicata,[FN9] a mechanism that allows a sentence to be set aside when it is considered fraudulent or contrary to the principles of due process. It was not able to be used in seeking to overturn the July 24, 1997, decision by Division C of the Supreme Court of Justice due to a failure to file.[FN10] The State further emphasized that the fact that a negative result was obtained through a fair process does not in itself constitute a violation of the Convention.

[FN9] According to the State, Article 178 of the Civil Code of Procedures establishes the following: "Annulment of fraudulent res judicata—Up until six months from the time a judgment is executed or has acquired the status of res judicata if it could not be executed, a claim may be heard to nullify the judgment or the agreement reached by the parties and approved by the Judge to end the case, on the grounds that the original action has been characterized by fraud or collusion on the part of one or both parties or of the Judge of the case or the parties, adversely affecting the right to due process.
A party or an outside third party who considers that he or she has been directly harmed by the judgment may file a claim for annulment, in accordance with the principles required in this section.
Only precautionary measures that are inscribable may be granted through this action.
If a decision were nullified, that would restore the case to the status indicated. However, nullity would not affect third parties acting in good faith that provided good and valuable consideration.
If the claim did not prosper, the claimant would pay double the costs as well as a fine not less than twenty units within the procedural guidelines." State's response to the initial petition of September 26, 2006.
[FN10] The State held that, in terms of the motion for annulment, this "…could be filed up to within six months of having been executed or having acquired the status of res judicata, if it were not executable. Thus it is obvious that the deadline for it to be filed has expired, precluding any action". State's response to the initial petition of September 26, 2006.
---

24. With regard to the second act of expulsion, the State indicated that the Association, in keeping with its autonomy as a private entity, had the authority to carry out another internal action which, in terms of the rights to a defense, would lead to a new expulsion. In this regard, it argued that the petitioner is required to file a new motion for amparo for the purpose of obtaining the protection of the right he considers violated, since this would have to do with new facts that have no relation to the facts of the concluded appeal for amparo.[FN11]

[FN11] This same conclusion was articulated in the decision of August 18, 1998, handed down by the First Specialized Corporate Transitory Court of Public Law, provided by the State on September 26, 2006, in its response to the initial petition.

IV. ANALYSIS OF ADMISSIBILITY

A. Commission's jurisdiction ratione personae, ratione loci, ratione temporis, and ratione materiae

25. The petitioner has the authority under Article 44 of the Convention to file applications on his own behalf. The alleged victim in the case was under the jurisdiction of the State of Peru at the time of the cited events. For its part, the State of Peru ratified the American Convention on July 28, 1978. Thus, the Commission has jurisdiction ratione personae to examine the petition.

26. The Commission has jurisdiction ratione loci, since the petition alleges violations of rights protected by the American Convention that would have taken place within the territory of a State party to the treaty.

27. Likewise the Commission has jurisdiction ratione temporis since the obligation to respect and guarantee the rights protected under the American Convention was already in effect for the State on the date in which the events alleged in the petition would have occurred.

28. Finally, the Commission has jurisdiction ratione materiae because the petition denounces alleged violations of human rights protected by the American Convention.

B. Exhaustion of Domestic Remedies

29. Article 46(1)(a) of the American Convention provides that, in order for a complaint filed before the Inter-American Commission to be admissible under Article 44 of the Convention, all domestic remedies must have been pursued and exhausted, in accordance with generally recognized principles of international law. The purpose of this requirement is to allow national authorities to hear cases involving purported violations of protected rights and, where appropriate, have the opportunity to resolve them before they are heard by an international instance.

30. The Peruvian State in a timely manner claimed the failure to exhaust domestic remedies. The State's argument is that the petitioner used domestic law improperly, since he let deadlines for filing motions expire and failed to file appeals that could have resolved the situation in question. In this regard, the State noted that the petitioner did not bring an action to execute judgment in the decision of February 28, 1990; that he did not file a motion for annulment of fraudulent res judicata; and that he did not file a new motion for amparo after his second dismissal.

31. The Commission notes that the petitioner has alleged a variety of facts that should be considered separately in order to analyze the requirement for exhaustion of domestic remedies. In this regard, from the petitioner's account, the Commissioner understands that the purpose of the petition can be summarized in the following points: i) the purported noncompliance with the judgment as a result of the lack of payment of mutual benefits during the time in which Mr. Ríos was separated from the Association; ii) the second retirement from the Association in 1993; and iii) the alleged lack of independence and impartiality of one of the judges who heard the criminal case against the Association's legal representative.

32. The Commission notes that the three points warrant a different analysis in terms of the requirement of exhaustion of domestic remedies. Although the petitioner believes the two first points are connected, since both the lack of payment and the second separation from the Association prove that the judicial decision was not executed in his favor, after reviewing the information it received, the Commission has come to a different conclusion. In the Commission's consideration, a simple reading of the judgment of February 28, 1990, shows that the purpose of the appeal for amparo was the first separation from the Association, without the favorable judgment being understood as prohibiting expulsion a posteriori. On the contrary, as indicated in paragraph 11 above, the same judgment established that there remained a possibility that the Association could bring appropriate actions if there were reasonable grounds for doing so. Accordingly, in terms of the exhaustion of domestic remedies, the Commission will analyze the three claims separately.

33. With regard to the lack of payment of the mutual benefits, the Commission notes that the resolution section of the February 28, 1990, judgment does not specifically order payment of the mutual benefits that were not collected. The order is generic and limited to indicating that Mr. Ríos should be reinstated with the rights that correspond to him. Without analyzing whether the lack of payment would in effect constitute a failure to comply with the judgment, the Commission notes that the petitioner never went to the judge who issued the judgment to express disagreement with the way the Association had carried out the judgment or to seek clarification about whether the abovementioned generic decision had also contemplated the payment of mutual benefits.

34. Mr. Ríos sought "restoration of the prior state of affairs" in 1997, at a time when the judgment enforcement stage had been shelved, due to his reincorporation into the Association, without the petitioner having sought payment in a timely manner within that process. In any case, the Commission notes that through this motion for restoration, the alleged victim was trying to argue new facts—the 1993 expulsion—and hence the judge in the case determined that the petitioner was alleging subsequent facts that differed from the purpose of the first appeal for amparo. The Commission considers that on this point, the petition does not meet the requirement of exhaustion of domestic remedies.

35. In terms of the second expulsion, of December 1993, the Commission notes that the petitioner pursued criminal action against the Association's legal representative for the crime of "resisting authority," arguing that this action implied a failure to comply with the February 28, 1990, decision in his favor. As indicated above in paragraph 32, the Commission understands that the second expulsion was a new development that the petitioner should have challenged separately, through a new appeal for amparo. In this regard, the Commission considers the State's argument to be valid. Although the petitioner argued that notification of the decision to expel him the second time had been late, in order to prevent the filing of appeals, the Commission notes that this argument was not made before any judicial instance. Under these circumstances, the Commission considers that here too the petitioner did not exhaust domestic remedies.

36. Finally, in terms of the alleged lack of independence and impartiality, on March 24, 1998, the alleged victim brought a complaint before the Office of Judicial Control against the

magistrates who absolved that Association's legal representative. This motion was declared inadmissible because that entity found that Mr. Ríos was seeking the review of judicial decisions in an administrative venue. The Commission notes that based on the reading of the complaint that was filed, the alleged victim did not indicate that the aforementioned judges had committed a breach of discipline. Rather, in this complaint he limited himself to giving an account of his expulsions from the Association and his motion for appeal, underscoring that the judges had not evaluated the evidence correctly. The Commission considers that the alleged victim did not pursue a disciplinary action or any other type of action to challenge the judges' purported lack of independence and impartiality, but—as was established in the internal resolution—what he was seeking was a review of the decision he considered unfavorable. The Commission thus considers that on this allegation, the petitioner improperly exhausted domestic remedies.

37. By virtue of the foregoing, the Commission concludes that this petition does not satisfy the requirement of exhaustion of domestic remedies established in Article 46.1 a) of the American Convention.

38. The Commission abstains, since the matter is rendered moot, from examining the other admissibility requirements provided in the Convention.

V. CONCLUSION

39. Based on the de facto and de jure arguments explained above, the Commission concludes that it has jurisdiction to hear this matter but that the petition is inadmissible due to a failure to exhaust domestic remedies, in accordance with Article 46.1 a) of the American Convention.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this petition inadmissible.
2. To notify the State and the petitioner 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 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.