Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 43/09; Petition 1166-04
Session:	Hundred Thirty-Fourth Regular Session (16 – 27 March 2009)
Title/Style of Cause:	Jorge Rafael Valdivia Ruiz 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:	Valdivia Ruiz v. Peru, Petition 1166-04, Inter-Am. C.H.R., Report No. 43/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)
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I. SUMMARY

1. On October 25th, 2008, the Inter-American Commission on Human Rights (hereinafter also "the Inter-American Commission", "the Commission", or "the ICHR") received a petition from Mr. Jorge Rafael Valdivia on his own behalf (hereinafter also "the petitioner", "the petitioner" or "the alleged victim") against the State of Peru (hereinafter also "the State", "the Peruvian State" or "Peru") for the alleged violation of his right to judicial protection enshrined in Article 25 of the American Convention on Human Rights (hereinafter also "the American Convention", "the Convention" or "the ACHR").

2. The petitioner alleged that the Superintendencia Nacional de Administración Tributaria [National Superintendence of Tributary Administration] (hereinafter also "the SUNAT") did not comply with what had been ordered in the firm ruling issued by the Second Compound Tribunal of Tambopata de Madre de Dios [Segundo Juzgado Mixto de Tambopata de Madre de Dios] (hereafter also called "the Second Tribunal") because it did not vacate the administrative sanction, depriving him of salary payments and decreasing his qualification points as a consequence of allegedly unjustified absences. According to the petitioner, notwithstanding the judicial decision which ordered the aforementioned memorandum to be left without any effect, to this date the four points which were taken away in his qualification of the second semester of 1999, have still not been restored, nor has he received the salary owed to him for the five days of unjustified suspension.

3. On the other hand, the Peruvian State pointed out that the SUNAT complied with the judicial resolution, thus leaving the memorandum without any effect. It pointed out that the petitioner was even awarded another judicial action as a consequence of his subsequent

destitution – on the basis of the sanctioning memorandum – and managed to be reincorporated to his job and to receive the payment of the suspended salaries during the period in which he had been illegally dismissed. Concerning the requisites of admissibility, the State argued that the petitioner did not exhaust all domestic remedies by means the sentence enforcing remedy. The State also alleged that some of the facts submitted before the Commission, that is, those related to the decrease of four points in his qualification, were part of the internal labor suit which the petitioner initiated as a consequence of his dismissal, and, in this sense, they had already been the object of decision in the domestic jurisdiction.

4. After analyzing the position of the parties involved, the Commission concluded that it has competence to hear the claim but that the petition is inadmissible due to the lack of exhaustion of domestic remedies, as established in Article 46.1 of the American Convention. In consequence, the Commission decided to notify both parties of its decision, to make this Report of Inadmissibility public, and to include it in its Annual Report.

II. PROCEEDINGS BEFORE THE COMMISSION

5. On November 2, 2004, the initial petition was received and was registered under number P-1166-04. On January 17, 2006, the Commission transmitted the pertinent parts of the complaint to the Peruvian State, requesting it that, in conformity with Article 30 of its Rules of Procedure, it should submit its observations within a period of two months. On March 24, 2006, in answer to a request for an extension submitted by the Peruvian State, the Commission granted a one month extension. The State, by means of written communications on the 15th and 26th of May, 2006, submitted its observations, which were sent to the petitioner on June 13, 2006.

6. On August 21, 2006, the petitioner submitted his observations, which were sent to the State on September 5, 2006, requesting that, in a period of one month, it should submit any observations it would deem pertinent to the case. On October 17, 2006, the State requested an extension period to submit its observations. On November I, 2006, the IACHR awarded the State an extension of 20 days.

7. On January 16, 2006, the State submitted its observations, which were sent to the petitioner on February 13th, 2007. On the other hand, through the April 20, 2007 written document, the petitioner requested a hearing during the 128th ordinary period of sessions of the Commission. To this respect, on July 17, 2007 the Commission informed the petitioner that due to the great number of hearings requested, it was not possible to grant a hearing on his case.

8. On April 13, 2007, the petitioner submitted additional information, which was sent to the State on August 6, 2007, requesting it to submit, in a period of one month, any observations it deemed pertinent. On October 24 and 25, 2007, the State submitted its observations.

9. On January 29, 2008, additional information was handed over by the State, which was sent to the petitioner on March 11, 2008, requesting him to submit, in a period of one month, any observations he may deem pertinent. On December 9, 2008 the Commission sent to the petitioners the appendices of the last communication of the State.

III. POSITION OF THE PARTIES

A. The petitioner

10. The petitioner pointed out that on November 5, 1999, the SUNAT – the public office for which he worked – issued memorandum No. 131-99-ADUANAS-PTOM.DDA, by means of which, on the basis of his allegedly unjustified absences, the SUNAT imposed on him a sanction consisting of 5 days of suspension, without pay, and four points were taken away from his attendance evaluation corresponding to the second semester of 1999.

11. He indicated that he contested this administrative act by means of an action seeking protection – amparo - which he interposed on November 8, 1999 and which was resolved in his favor on April 17, 2000 by the Second Tribunal. He added that the judicial decision declared his demand as having grounds, and ordered the punitive memorandum to be vacated. It added that this ruling was declared final on July 20, 2000, and that there were no further remedies to exhaust.

12. The petitioner claimed that, in conformity with Article 27 of Law 25398 Complementary to the Provisions on Habeas Corpus and Defense, it corresponded to the same Tribunal to enforce its ruling. In this sense, he mentioned that on September 7, 2000, the Second Tribunal ordered the SUNAT to comply with the sentence, to which this entity responded on September 28, 2000, indicating that it had vacated the memorandum. The petitioner pointed out, nevertheless, that the SUNAT did not restore the four points that had been decreased in his evaluation nor did it reimburse the salary.

13. According to the petitioner, on April 21, 2004, he requested the Second Tribunal to order the SUNAT to vacate the memorandum, as well as to modify the qualification corresponding to the second semester of 1999, and to return the money which had been discounted.

14. The petitioner indicated that in basis on this request, the Second Tribunal issued a resolution on April 23, 2004, ordering the SUNAT to comply with all aspects of the ruling. He pointed out that notwithstanding the aforementioned, he has still not received the payment of the money discounted from his salary, and that his evaluation remains poor. According to the petitioner, it was this action that served to exhaust all available domestic remedies.

15. The petitioner claimed that the State seeks to confuse the Commission by mentioning the enforcement of a ruling of another judicial labor-related case in which he is also involved. He explained that after the November 5, 1999 memorandum imposed sanctions on him, he was fired by the SUNAT, and for that reason he brought a lawsuit to annul his dismissal. The petitioner pointed out that he also won this suit, in which the court ordered his reinstatement as well as the payment of the wages he had not received. The order is presently in stage of enforcement within the national jurisdiction.

16. The petitioner pointed out that the object of his petition before the Commission is not the aforementioned process of nullity, but rather the enforcement of the April 17, 2000 protection (amparo) ruling, by means of which the Second Tribunal the SUNAT to void the punitive

memorandum of November 5, 1999 without any effect. He emphasized that the two suits bear no relation to each other.

B. The State

17. The State argued against what had been pointed out by the petitioner, indicating that on November 3, 2004, the SUNAT sent a report to the Second Tribunal stating that all aspects of the April 17, 2000 ruling had been carried out, and the petitioner never questioned this report before the Tribunal.

18. Likewise, it pointed out that on October 25, 2004, the SUNAT sent a communication to the petitioner, informing him that, in accordance to the April 17, 2000 ruling issued by the Second Tribunal, the November 5, 1999 memorandum had been vacated. It also added that by means of an official notice of March 10, 2006, the SUNAT informed the Peruvian Ministry of Justice that it had carried out the aforementioned ruling.

19. The State argued that the petitioner has not yet exhausted all domestic remedies. Specifically, it indicated that the domestic legislation provides for the Enforcement of Judicial Resolutions, regulated in the Civil Process Code, articles 713 to 719. The State pointed out that this process can still be exhausted by the petitioner, because its prescription period is ten years. It indicated that Article 27 of Law 25.398 Complimentary to the Provisions on Habeas Corpus and Protection (amparo), establishes that "the consented or enforced final resolutions that befall on Warranty Actions will be enforced and carried out by the Judge, the Court or the Tribunal that had jurisdiction over them in first instance, in the manner and form established in Titles XXVIII and XXX, Second Section, of the Civil Process Code, inasmuch as they are compatible with its nature." In that respect, the State explained that although those sections of the Civil Process Code are no longer in force, they had been substituted by the 1993 Civil Process Code which regulates the Enforcement Process of Judicial Resolutions.

20. Likewise, the State pointed out that in basis of the new Constitutional Process Code, which has been in force since January 1, 2005, the petitioner has the possibility of requesting a judge to impose coercive measures in case the rulings are not carried out.

21. On the other hand, the State informed that the petitioner had attempted to bring a lawsuit, still in process, in order to obtain the annulment of his dismissal. It added that in this claim, the petitioner alleged the facts related to the deduction of four points in his evaluation of the second semester of 1999, as a result of the November 5, 1999 memorandum. According to the State, the petitioner based his complaint on the fact that, in order to fire him, the SUNAT took into account his allegedly unjustified absences during September 1999.

22. The State pointed out that the First Labor Court of Callao ruled in favor of the petitioner through the April 23, 2003 ruling, annulling his dismissal, taking into account the April 17, 2000 protection ruling issued by the Second Tribunal. The State indicated that this decision was confirmed by the First Court of the Superior Court of Callao by means of the February 7, 2004 resolution and that it became final on July 18, 2006, when the Court of Constitutional and

Transitory Law of the Supreme Court of Justice declared that the cassation remedy interposed by the SUNAT had no legal basis and, thus, was unfounded.

23. The State pointed out that on February 15, 2007 the petitioner was reinstated in his workplace, in attention to what had been ordered in the labor action annulling his dismissal. Likewise, it indicated that the wages that had not been paid to the petitioner, as well as the respective legal costs were object of an appraisal which was transmitted on September 11, 2007 by the Labor Court of the Supreme Court of Justice of Callao to both parties.

24. In a subsequent document, the State alleged that the petition does not expose facts that could characterize any violation to the rights established in Article 25.2 c) because, by arguing that the Court's order was not carried out, the petitioner seeks to obtain additional benefits which were not included in the judicial resolution in his favor, which limits itself to order "that all things return to their previous state", with no mention of the payment of salaries for the five days he was suspended nor any changes to be made in the qualification of personnel.

IV. ANALYSIS OF ADMISSIBILITY

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

25. The petitioner is authorized, under Article 44 of the Convention, to file applications on his own behalf. The alleged victim in the case has been subject to the jurisdiction of the State of Peru throughout the entire period in which the alleged facts occurred. Peru has been a state party of the American Convention since July 28, 1978, when it deposited its instrument of ratification. In consequence, the Commission has competence ratione personae to examine the case.

26. Likewise, the Commission has competence ratione loci to hear the request, inasmuch as in it there are allegations of the violation of rights protected by the American Convention and which would have taken place under the jurisdiction of the State.

27. The Commission has competence ratione temporis to study the complaint inasmuch as the binding duty to respect and guarantee all rights protected by the American Convention was already in force for the State on the date on which the alleged facts would have occurred.

28. Finally, the Commission has competence ratione materiae, because the petition denounces possible violations of rights protected by the American Convention.

B. Exhaustion of domestic remedies

29. Article 46.1 (a) of the American Convention provides that, for a complaint filed with the Inter-American Commission in accordance with Article 44 of the Convention to be admissible, it is necessary for all domestic remedies to have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to allow domestic authorities to hear an alleged violation of a protected right and, if appropriate, to provide a solution before the claim is heard in an international venue.

30. Before analyzing whether the requisite of exhausting domestic remedies has been satisfied, the Commission deems it necessary to delimit the objective of the petition. The Commission has observed that two judicial actions have been mentioned: one of a constitutional nature and the other of a labor-related nature. The subject matter of the first was an administrative sanction issued by the SUNAT against the alleged victim for alleged unexcused absences, in which it decided to suspend him for five days without pay and reduced, by four points, his work evaluation during the second semester of 1999. This process culminated with an April 17, 2000 ruling in favor of the petitioner, ordering that the administrative sanction be vacated. The subject matter of the second process was the subsequent removal of the petitioner from the SUNAT. This process ended with a ruling in favor of the petitioner in which his dismissal was reversed, the SUNAT was ordered to reinstate him to his job and to provide backpay.

31. The petitioner emphasized that the object of his petition was exclusively to obtain the enforcement of the April 17, 2000 constitutional ruling which dismissed the SUNAT administrative sanction. The petitioner did not submit any allegations in his petition regarding his subsequent dismissal or that the second labor-related action he had initiated as a consequence of the first constituted violations to his rights. On the contrary, the petitioner pointed out that the suits are not related, and that the second action is not relevant for analyzing the petition. Although the Peruvian State mentioned both actions indicating that they were related, the Commission has observed that while the subsequent dismissal could have been due to the sanctions previously imposed, the purpose of the petition is not the sanctions in themselves but rather the alleged lack of compliance with the judicial ruling that declared them unconstitutional.

32. By virtue of the aforementioned, the Commission considers that the purpose of the present petition is solely the alleged lack of compliance with the April 17, 2000 amparo ruling, particularly the failure to provide backpay during the five days of suspension as well as the non-restitution of the four points that had been taken away from his semi annual evaluation.

33. The Commission has observed that the April 17, 2000 judicial decision annulled the administrative sanction against the petitioner. The constitutional ruling did not specifically establish that the petitioner should receive payment for the days he was suspended nor did it order that the four evaluation points be restored to him. From the documents provided by both parties it turns out that, according to the SUNAT, the enforcement of the protective ruling did not imply the same thing the petitioner had concluded, and this was duly informed to him by the SUNAT on several occasions through written communications. Without beginning to analyze if in fact there was a lack of enforcement of the ruling, the Commission points out that, within the domestic jurisdiction there was an actual controversy concerning the scope and content of the order ruled by the amparo judge.

34. Having thus established this, the Commission goes on to analyze whether the requirement of exhaustion of domestic remedies has been fulfilled, and for this it is necessary to establish which will be the adequate resource for each concrete case, signifying that which may help solve the juridical situation at hand.

35. The Commission points out that the Peruvian State has opportunely submitted the exception of the lack of exhaustion of domestic remedies, establishing three allegations. The first being that the SUNAT argued in the domestic jurisdiction that it had fulfilled all aspects of the ruling and that the petitioner had not contested this before the very same tribunal which had issued the decision. The second reasoning of the State is that the petitioner did not bring an action to enforce the ruling in compliance with Law 25398 Complementary to the Provisions on Habeas Corpus and Amparo, which refers to the civil process provisions concerning the fulfillment of judicial resolutions. And the third reasoning refers to the fact that by virtue of the Code of Constitutional Procedures, the petitioner was provided the opportunity to request that the judge apply coercive measures to ensure the compliance with the ruling if necessary.

36. According to the record, on August 1, 2000, the petitioner requested the SUNAT's Manager of Human Resources to enforce the judicial ruling. Likewise, on April 21, 2004 he submitted before the Second Tribunal a petition requesting that the ruling be enforced, indicating which points of the ruling he considered had not been fulfilled. The Commission observes that by virtue of this request, on April 23, 2004 the Second Tribunal issued a resolution by which it urged the SUNAT to comply with "all aspects of the ruling if it did not wish to be summoned by the law." In response to this resolution, on November 3, 2004 the SUNAT submitted before the Second Tribunal a report detailing that it had adopted the necessary measures in order to completely fulfill the judicial resolution[FN1]. From the available information, it turns out that the petitioner did not answer this nor did he contest the information contained in this document, and neither did he request the judicial authority to establish what was the scope of the order contained in the April 17, 2000 resolution, given the controversy on this point.

[FN1] Letter No. 0578-2004-SUNAT/2F3000 dated September 29, 2004, issued by the SUNAT and Report No. 0020-2006-2JMT-CSJMDD/PCF dated November 30, 2006 issued by the Second Compound Tribunal of Tambopata.

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37. Based on these facts, the Commission points out that by means of the April 21, 2004 request the petitioner attempted to enforce the ruling in the manner provided by domestic law. The result was an order from the Second Tribunal that the SUNAT comply with all aspects of that ruling. Notwithstanding this, the Commission points out that the petitioner initiated a domestic mechanism in order to enforce the ruling, but he failed to follow through with it. In effect, the information offered by both parties evidences that the April 21, 2004 request was the only action the petitioner took in the process of enforcing the ruling. The subsequent actions were undertaken by the Second Tribunal ordering the fulfillment of the totality of the ruling, and by the SUNAT, informing that it had already complied with the judicial order. As has already been mentioned, the petitioner did not contest this information before the Second Tribunal even though, according to available information, he had the opportunity to do so[FN2].

[FN2] On January 10, 2007, the petitioner said that he did not respond the Report of the SUNAT before the Second Tribunal, with no mention that he was impeded to.

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38. The Commission points out that the last version of the facts submitted to the judicial authority in the action to enforce the ruling was the version offered by the SUNAT arguing that it had complied with the amparo decision. Under these circumstances, the Commission considers that in order to give the State the opportunity of solving the situation which has been presented before the Inter-American System, the petitioner should have informed the Second Tribunal that the ruling had not been enforced; this would have allowed it to consider the positions of both parties and allowed it to proceed according to the dictates of the law, especially as there was a controversy concerning the scope of the judicial ruling. The petitioner limited himself to requesting the Commission to ask the State for information concerning the enforcement of the ruling. At the same time, the domestic authority charged with the enforcement was unaware that the petitioner disagreed with the ways in which the SUNAT attempted to carry out the ruling.

39. In conclusion, the Commission considers that the petitioner did not exhaust all the remedies of the internal jurisdiction and, thus, the petition does not comply with the requisite established in Article 46.1 a) of the American Convention.

40. The Commission abstains itself, by subtraction of subject matter, of examining the rest of the admissibility requisites contemplated in the Convention.

V. CONCLUSIONS

41. 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 the present case inadmissible.
2. To notify both parties 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.