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Title/Style of Cause: Maria Mercedes Zapata Parra v. Peru
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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
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I. SUMMARY

1. On January 8, 1999, the Inter-American Commission on Human Rights (hereinafter also “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition submitted on her own behalf by María Mercedes Zapata Parra (hereinafter also “the petitioner” or “the alleged victim”), in which it is alleged that the Republic of Peru (hereinafter also “Peru,” “the State” or “the Peruvian State”) violated her rights (no specific articles are specified) by not having ordered payment of the wages she did not collect as a teacher during the time she was deprived of her liberty in the context of a criminal action for the crime of terrorism, for which she was acquitted.

2. For its part, the State indicated that the facts put forward in the petition do not characterize violations of the American Convention. Moreover, the State argued that the petition was submitted past the six-month deadline from the date in which the administrative decision rejecting the petitioner’s claim took effect. It emphasized that the decision became final because the petitioner did not make use of either administrative or judicial domestic remedies to attain payment of the wages she alleges she is due.

3. After analyzing the positions of the parties, the Commission concluded that it has jurisdiction to consider the claim submitted but that the petition is inadmissible due to noncompliance with the requirement of exhaustion of domestic remedies enshrined in Article 46.1.a) of the American Convention. As a result, the Commission decided to notify the parties, publish the current Inadmissibility Report, and include it in its Annual Report.

II. PROCESSING BY THE COMMISSION

4. On January 8, 1999, the Commission received the initial petition, which was registered as Case No. 12.079.

5. On January 19, 1999, the Commission sent the pertinent portions of the petition to the Peruvian State, requesting that it submit its response within a period of three months. On February 26, 1999, additional information was received from the petitioner. On April 20, 1999, the Peruvian State requested an extension, which was granted by the IACHR on April 21, 1999, for an additional one-month period.

6. On May 25, 1999, the Peruvian State submitted its response, which was forwarded to the petitioner on August 9, 1999, requesting that she submit her comments within a period of 45 days.

7. On October 18, 1999, the petitioner submitted her comments, which were forwarded to the Peruvian State on November 4, 1999, requesting that it present any comments it deemed appropriate within a period of one month.

8. On December 9, 1999, the Peruvian State requested an extension of that deadline, which was granted by the Commission on January 7, 2000, for an additional one-month period.

9. On February 10, 2000, the State submitted its comments, which were sent to the petitioner on February 16, 2000.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioner

10. The petitioner alleged that she was apprehended in June 1993, in the context of a criminal action related to acts of terrorism. She indicated that the process ended in October 1995 with her acquittal and ultimate freedom.

11. She specified that at the time of her detention she was working as a teacher and that during the period in which she was deprived of liberty, the entity in question abstained from paying her salary. The petitioner requested that the Commission order the State to pay the wages that she did not collect between June 1993 and October 1995, the period in which she remained deprived of liberty, as well as compensation for damages.

12. On this point, she explained that the request for compensation is based on the costs generated during her time in prison, where she needed the assistance of a medical doctor. She indicated that these costs were covered by her family, that she needs to continue to take care of her health, and that she needs to help her son.

13. In terms of her job situation, the petitioner indicated that although she regained her freedom on October 20, 1995, she was unable to return to her job for health reasons, for which she requested a leave until December 31 of that same year. She added that in February 1996 her

work situation was regularized and that three years later she began taking steps to be able to retire from the teaching profession due to her state of health.

14. In terms of the admissibility requirements, the petitioner alleged that she was unable to present her claim judicially due to a lack of economic means, but that she did so orally—persistently and with no response—before the Regional Education Administration of Piura. In a later communication, the petitioner indicated that on November 23, 1995, she requested restoration of her wages through administrative channels, without having achieved a favorable decision.

15. In response to the State’s arguments, the petitioner indicated that she was not notified in a timely manner of the administrative decision denying her request for payment of the remunerations. She added that she became aware of that decision in May 1999, when she happened to go to the respective entity and was told that they “were looking for her” as they wanted to know whether she had in fact presented a request for restoration of wages, requiring that she take that request in with her. She indicated that when she took in the requested copy, they informed her that she had to resubmit it. According to the petitioner, on May 10, 1999, she received a response in which it was indicated to her that persons deprived of liberty fall under abandonment of post, which implies that they have no right to remunerations.

16. The petitioner indicated that, faced with this situation, she submitted another “dossier” to clarify that there was no abandonment of post, since when she was arrested her mother requested a one-week leave without pay, thinking that the detention would be brief.

17. Finally, the petitioner reiterated that other than having submitted her request for payment of wages through administrative channels, she did not make any claims before other domestic bodies, nor did she go to the Inter-American Commission previously, as she was unaware of its functions.

B. Position of the State

18. In terms of the facts of the case, the State indicated that the alleged victim, a teacher at the “Juan de Mori” School of Catacaos, Piura, was arrested on July 17, 1993, by members of the National Police, with a ruling on July 27, 1993, opening a criminal case and detention order and ordering her internment, as of August 12, 1993, in the Women’s Penal Establishment of Chiclayo.

19. The State indicated that the petitioner regained her freedom on October 20, 1995, after having been acquitted by a judgment of the Supreme Court of Justice on October 17, 1995.

20. With regard to the claim for uncollected wages, the State described the administrative procedures undertaken internally during the time in which the petitioner was deprived of her liberty, along the following lines:

- On July 19, 1993, the petitioner asked the “Juan de Mori” School Administration for an unpaid leave from July 19 to 23, 1993, alleging that it was impossible for her to go to work “for personal reasons,” since she had been arrested by the National Police.
- On August 16, 1993, once the detention had been formalized in the criminal case, it was proposed that the alleged victim be replaced while her detention continued, so as not to impede class development. As a result, on October 21, 1993, the Regional Administration of Piura issued a decision in which the payment of remuneration to the petitioner was suspended from August 2, 1993, until the date on which she would ultimately return to work.
- Once the petitioner had been acquitted, on December 29, 1995, the same Administration issued a decision in which the suspension of payment of remunerations was left without effect as of October 22, 1995. However, at the request of the petitioner, she was given unpaid leave between October 23, 1995, and December 31, 1995, for personal reasons.
- On November 3, 1995, the petitioner requested payment of wages corresponding to the period of her detention. A decision on this request was made on December 15, 1995, by the Personnel Office, which rejected the request in accordance with public order regulations related to the National Budget that prohibit the payment of remunerations to national public servants for days not worked. That same month, the petitioner was notified of this decision.
- Due to the fact that the petitioner requested unpaid leave only for the period between July 18 and 23, 1993, and did not regularize her work situation either personally or through family members, the correct step under the rules would have been to begin a disciplinary action against her. However, based on the principle of fairness, the Piura Regional Education Administration accepted her reinstatement into the teaching service.
- On May 5, 1999, the petitioner again requested payment of the corresponding remunerations for the period of her detention, and it was reiterated to her that her claim was not allowed.

21. In terms of the requirements for admissibility, the State alleged that the petition does not refer to acts that characterize a violation of a right enshrined in the American Convention. To the contrary, in the State’s view, the petition incorporates a claim of an administrative nature. According to the State, the payment of remunerations of public servants derives solely from actual work performed, without prejudice to paid leaves or furloughs specifically provided for under the law. It added that all public servants may request unpaid leave for reasons beyond their control that prevent them from going to work, in order to avoid falling under the definition of abandonment of post.

22. The State indicated that the claim should have been brought before the competent administrative instances, so that it could be resolved based on the procedures enshrined in Supreme Decree No. 02-94-JUS—Sole Text of the Law of General Standards for Administrative Procedures, in accordance with the Teachers Law and its Regulations.

23. It explained in detail that in accordance with applicable domestic provisions, the alleged victim had a period of 15 working days in which to file a challenge for reconsideration or appeal, and eventually she could have presented an appeal for review before the Presidency of the Temporary Council of the Piura Regional Administration. The State alleged that the petitioner did not make use of these mechanisms and did not file an appeal for relief (amparo) or lodged a judicial administrative dispute.

24. The State emphasized that the petitioner also did not initiate in a timely manner the procedures established internally for attaining compensation for damages caused as a result of her detention in a criminal case in which she ended up being acquitted. According to the State, the deadline for initiating such an action had already expired when the petitioner submitted her claim to the Inter-American Commission.

25. Finally, the State also alleged that the petition does not comply with the requirement for submission within a period of six months, as it was presented “outside of all reasonableness and with much excess” after the petitioner’s application had been resolved through the administrative process.

IV. ANALYSIS OF ADMISSIBILITY

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

26. The petitioner has the authority under Article 44 of the Convention to present claims on her own behalf. The alleged victim in the case was under the jurisdiction of the Peruvian State at the time of the facts being alleged. For its part, the State of Peru ratified the American Convention on July 28, 1978. Thus, the Commission has competence *ratione personae* to consider the petition.

27. The Commission has competence *ratione loci* to consider the petition, as the petition alleges violations of rights protected under the American Convention that would have taken place within the territory of a State party to the treaty.

28. Moreover, the Commission has competence *ratione temporis*, as the obligation to respect and guarantee the rights protected by the American Convention was already in effect for the State on the date in which the facts alleged in the petition were said to have occurred.

29. Finally, the Commission has competence *ratione materiae*, as the petition denounces alleged human rights violations protected by the American Convention.

B. Exhaustion of Domestic Remedies

30. Article 46(1)(a) of the American Convention holds that in order for a claim submitted to the Inter-American Commission to be admissible under Article 44 of the Convention, it is necessary for domestic remedies to have been attempted and exhausted, in accordance with generally recognized principles of international law. This requirement has the purpose of allowing the national authorities to consider the alleged violation of a protected right and, as appropriate, to have the opportunity to resolve it before it is heard by an international body.

31. The Peruvian State maintained that the alleged victim did not exhaust domestic remedies. Specifically, it indicated that: i) no cases were filed for reconsideration or appeal through administrative channels; ii) no judicial remedies were attempted, such as an appeal for *amparo* or

an administrative dispute; and iii) no action was undertaken to obtain compensation for damages as a result of the detention.

32. The petitioner initially alleged that she had not attempted domestic remedies because she was unaware of them and because she lacked the economic means. In a later communication, the petitioner said that on November 23, 1995, she had gone to the Regional Education Administration of Piura to request payment of the wages she had not collected, obtaining an unfavorable decision which she apparently had not been notified of in a timely manner.

33. The Commission notes that this petition incorporates two issues. The first refers to the lack of payment of wages resulting from deprivation of liberty during a criminal process that ended with a verdict acquitting the alleged victim. The second has to do with damages caused as a result of the detention itself.

34. As far as the first point is concerned, the parties agree that the only mechanism attempted by the petitioner was the request of November 23, 1995, before the Regional Education Administration of Piura to obtain the payment of wages uncollected during the detention. The petitioner did not lodge any administrative or judicial appeal to the decision rejecting her request. The arguments put forward by the petitioner to justify the omission are an unawareness of the remedies available and the lack of economic means. While these are elements the Commission can take into account, case by case, to analyze compliance with the requirement for exhaustion of domestic remedies, the petitioner limited herself to mentioning these issues generically, without detailing the particular circumstances surrounding her situation, the relationship between these circumstances and the alleged impossibility of exhausting domestic remedies, or the mechanisms attempted to be relieved of judicial fees or to obtain some type of legal assistance free of charge.

35. The Commission notes that in one of her communications the petitioner mentioned that she had not been notified in a timely manner about the unfavorable administrative decision. However, the petitioner does not mention the reasons that the alleged late notification would have made it impossible for her to exhaust domestic remedies, nor does she indicate that she had reported this situation to any judicial authority.

36. With regard to the second point, the IACHR has no detailed information about the deprivation of liberty nor has knowledge of remedies exhausted to obtain reparations for the time in which she was deprived of her liberty. Neither did she present any arguments that would tend to justify her omission.

37. By virtue of the aforementioned, the Commission considers that the present petition does not satisfy the requirement for exhaustion of domestic remedies contemplated in Article 46.1 a) of the American Convention.

38. The Commission abstains from examining the other requirements for admissibility contemplated in the Convention, the question being moot.

V. CONCLUSION

39. 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.