

REPORT No. 5/10
PETITION 12.118
INADMISSIBILITY
ALICIA ALVAREZ TRINIDAD
PERU
March 15, 2010

I. SUMMARY

1. On December 23, 1996, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission", "the Commission" or "the IACHR") received a petition that Alicia Alvarez Trinidad (hereinafter "the petitioner" or "the alleged victim") filed on her own behalf in which she alleges that the Republic of Peru (hereinafter "Peru", "the State" or "the Peruvian State") violated several rights protected under the American Convention on Human Rights (hereinafter "the American Convention", "the Convention" or "the ACHR"). The petitioner claimed that the Regional Education Office of the Department of Huánuco arbitrarily denied her request for reassignment. She stated that a suit of June 30, 1995 seeking *amparo* relief to challenge the decision was ultimately dismissed by the Constitutional Tribunal. She stated that the preamble to the ruling acknowledged her right to continue to serve as a teacher in the public education sector in the province of Ambo, Huánuco. However, she claimed that the Regional Education Office ordered, as a disciplinary measure, the removal from her position for a period of three years, which she contends constituted noncompliance with the ruling of the Constitutional Tribunal.

2. The State maintained that contrary to what the petitioner had alleged, the domestic court authorities had flatly dismissed her suit seeking *amparo* relief, filed on June 30, 1995. Hence, it argued, the petitioner's claim of noncompliance is groundless. It contended that the alleged victim failed to exhaust the administrative and judicial remedies to challenge the disciplinary sanction of temporary separation from service ordered by Huánuco's Regional Education Office. It asserted that the facts narrated by the petitioner do not tend to establish a violation of the Convention-protected rights raised.

3. After examining the positions of the parties, the Commission concluded that while it is competent to consider the petition, the latter is inadmissible under Article 46(1)(a) of the American Convention on Human Rights. The Commission also decided to notify the parties of this Inadmissibility Report, to publish it and include it in its Annual Report.

II. PROCESSING BY THE COMMISSION

4. The petition was received on December 23, 1996 and registered as number 12.118. The petitioner sent additional communications on December 17, 1997; April 24, March 9, May 13, July 20, November 13 and 20, 1998, and March 8, 1999. The Commission forwarded the relevant parts of the petition and additional communications to the State, with the request that it submit its response within three months, in keeping with the Commission's Rules of Procedure then in force.

5. The State submitted its response on August 9, 1999, which was forwarded to the petitioner on August 31, 1999. The State submitted additional communications on November 2 and December 9, 1999; January 11, 2000; January 19 and March 27, 2001; July 21, August 8 and 29, October 2 and 21, November 13 and December 6, 2002; December 23, 2009, January 22, and February 22, 2010.

6. The petitioner submitted additional briefs on June 7, August 16 and October 18, 1999; April 12, March 20, May 3, June 29 and November 11, 2000; January 9, February 26, March 2, April 16, and July 16, 2001; January 22, February 12, April 18, July 10, August 1 and September 5, 2002; February 19, September 5, September 30, and October 7, 2003; May 7, July 7 and 13, November 12 and 16, 2004; April 12 and September 30, 2005; September 28, 2006, and October 19, 2009.

III. POSITIONS OF THE PARTIES

A. The petitioner

7. The petitioner claimed that between 1985 and 1995, she served as a public school teacher in Ambo province, department of Huánuco. She asserted that she had requested reassignment to another county on a number of occasions since late 1993, on the grounds of emergency evacuation. The Huánuco Education Office, Andrés Avelino Cáceres Region, denied the request on August 10, 1994 and June 14, 1995.

8. The petitioner said that she filed an *amparo* suit on June 30, 1995, alleging violation of her constitutional rights to petition and to work. The account of the facts indicates that the purpose of the petition was to challenge the Huánuco Regional Education Office's refusal to reassign her to another county and to be awarded the pay and benefits she presumably did not receive between April and June 1995. The petitioner alleged that on July 12, 1995, Huánuco's Second Specialized Civil Court admitted the *amparo*. An appeal was filed to challenge this decision, whereupon the Civil Chamber of the Huánuco Superior Court amended the decision on the grounds that Mrs. Alicia Alvarez Trinidad had failed to exhaust the prior administrative avenues.¹

9. According to the affixed documents, the Constitutional Tribunal heard an extraordinary appeal for nullification that the alleged victim filed on September 26, 1997, in order to contend the dismissal of the *amparo* ruled by Huánuco Superior Court. The relevant part of the Constitutional Tribunal's judgment reads as follows:

"The proceedings have established that the plaintiff's right of petition was not violated, as she filed her request asking to be reassigned and received an answer from the competent authority. In other words, the plaintiff was not denied the opportunity to make a request and/or petition of the competent authority, and the opportunity afforded was timely. Nor was her right to work violated, as the plaintiff was working in her assigned position at the time the petition was filed.

[...]

Plaintiff should continue working in her appointed position and receive the remuneration that the law prescribes; hence, the authority should pay the plaintiff the amounts that were not paid to her.

[...] Plaintiff retains her right to request reassignment, in accordance with the Law Governing the Teaching Profession and the Regulations Governing Reassignment and Exchanges."²

10. The petitioner stated that on December 5, 1995, while the *amparo* process was underway, the Regional Education Office, Andrés Avelino Cáceres Region, issued a Regional Education Office Resolution No. 03515, which ordered that she be separated from her post for a period of three years, without pay. The petitioner alleges that the administrative authority reasoned that the alleged victim had incurred the following grounds for disciplinary action: abandonment of post; excessive leave and severing of human relations with the community in which she worked. The petitioner affirmed that these charges were based on reports and records of infractions falsified by personnel of the Huánuco Regional Education Office for the purpose of smearing her good name.

11. She claimed that she was never notified of Regional Resolution No. 03515 and that the Huánuco Regional Education Office refused to provide her a copy despite her repeated requests. She alleged that without a copy of Resolution No. 03515, she had no way to challenge it via any administrative

¹ Communication from the petitioner received on October 18, 1999, annexes, Resolution No. 11 of September 13, 1995, Second Special Civil Court of Huánuco, Case No. 49-95.

² Communication from the petitioner received on May 13, 1998, copy of the ruling that the Constitutional Tribunal delivered on September 26, 1997, Case No. 49-95, emphasis does not appear in the original version.

or judicial avenue. She stated that even so, the court authorities who took up her petition seeking *amparo* relief had a responsibility to decide on the lawfulness of Regional Resolution No. 03515.

12. The petitioner asserted that the Constitutional Tribunal's ruling of September 26, 1997, was based on fictitious facts regarding her job situation and on evidence falsified by employees of the Huánuco Regional Education Office, Andrés Avelino Cáceres Region. She claimed that members of the Judicial Branch, the Public Prosecutor's office and her attorney had "conspired and planned to make the [petition of] *amparo* inadmissible."³

13. She observed that while Peruvian law makes provision for a remedy to nullify a fraudulent *res judicata* and other ordinary actions and *amparo* petitions to protect the right to due process, "the filing of such actions is simply a futile exercise with negative outcomes: turning to the courts entails expenses and time spent on proceedings that could go on indefinitely, all compounded by the uncertainty of the outcome. The result is a violation of one's human rights...."⁴ She went to assert that the time taken to decide the petition seeking *amparo* relief, which she filed on June 30, 1995, was longer than the time period prescribed under domestic law.

14. The petitioner asserted that the Huánuco Regional Education Office did not comply with the *consideranda* paragraph of the Constitutional Tribunal's ruling regarding her right to continue working in the position to which she was named.⁵ In this regard, she attached a handwritten document titled "Statement for the Record", signed and sealed by an agent of the Peruvian National Police on December 11, 1997. This document certifies that Mrs. Alicia Alvarez Trinidad appeared at the Huánuco Regional Education Office on December 11, 1997 to demand compliance with the preamble of the aforementioned ruling of the Constitutional Tribunal.⁶ The petitioner states that the foregoing notwithstanding, she stopped receiving her remuneration in April 1995 and since then her financial circumstances have been strained and she has had no access to medical care. She observed that on several occasions she had asked to be reinstated as a teacher in the public education sector of the department of Huánuco, but her requests had gone unanswered.

15. The petitioner asserted that other professors who faced disciplinary action were treated favorably both by the courts and the administrative authorities because of alleged connections to officials in the Huánuco Regional Education Office. She therefore alleged violation of the right to equal treatment under the law and of a number of domestic laws. She further maintained that the Peruvian State was responsible for violation of the rights to life, to protection of the family, to a fair trial and to judicial protection, the principle of *ne bis in idem*, the right to work, the right to health, the right to social security and other rights protected under inter-American instruments and Peruvian law.

16. The IACHR notes that throughout the processing of the present petition, Mrs. Alicia Alvarez Trinidad described facts and supplied copies of documents that would appear to have no relationship to her original petition. Among the communications that the petitioner sent were press clippings on a variety of topics, including purported irregularities in the Huánuco Regional Education Office and educational institutions in that department; excerpts from laws and the Constitution of Peru; excerpts from books and academic texts; administrative and judicial decisions involving public school teachers in the department of Huánuco, and other documents. Because no argument is made as to the relevance that the information in question has to the petition lodged on December 23, 1996, the Commission concludes that it was provided merely as reference material.

B. The State

³ Communication from the petitioner received on October 18, 1999, p. 4.

⁴ Communication from the petitioner received on October 18, 1999, p. 8..

⁵ See paragraph 9 above, underlined excerpt from the Constitutional Tribunal's ruling of September 26, 1997.

⁶ Communication from the petitioner received on May 13, 1998, document titled "*Acta de Constatación*" dated December 11, 1997.

17. The State asserted that at the time she filed her petition of *amparo* on June 30, 1995, Mrs. Alicia Alvarez Trinidad was working as a teacher at the Colegio Nacional Integrado de Huaracalla, in Ambo province, under the jurisdiction of the Regional Education Office of the Andrés Avelino Cáceres Region. It observed that the purpose of her petition of *amparo* was to challenge the administrative authority's refusal to reassign the alleged victim to another post. It stated that the Constitutional Tribunal declared the petition of *amparo* inadmissible and concluded that the petitioner's constitutional rights to petition and to work had not been violated.

18. The State argued that the paragraph in the preamble to the Constitutional Tribunal's ruling that states that the alleged victim "should continue working in her appointed position" is not a court order, but rather an "objective statement of a right, as a logical consequence of the fact that her petition seeking *amparo* relief was inadmissible."⁷ The State asserted that this reasoning is consistent with the statement in the ruling to the effect that the petitioner has a right to request reassignment to another post under the terms of the corresponding legislation. In that connection, the State asserted that the petitioner's allegation that the Constitutional Tribunal's ruling had been ignored by the Huánuco Regional Education Office is baseless, especially since the operative part of the ruling held that the action of *amparo* filed on June 30, 1995, was inadmissible.

19. The State argued that separate and apart from the *amparo* petition filed by Mrs. Alicia Alvarez Trinidad, she had been temporarily separated from service for a period of three years by virtue of Regional Education Office Resolution No. 03515 of December 5, 1995. It pointed out that the *amparo* petition had claimed an alleged violation of the right to petition and the right to work by virtue of the administrative authorities' refusal to grant the alleged victim's request for reassignment, but not the lawfulness of Regional Education Office Resolution No. 03515 of December 5, 1995.

20. The State alleged that in the submissions she presented to the IACHR, the petitioner acknowledged that she did not exhaust the local remedies to challenge Regional Education Office Resolution No. 03515. It stated that Mrs. Alicia Alvarez Trinidad had administrative remedies, ordinary actions, and *amparo* petitions available to her as suitable remedies to challenge the effects of an administrative decision contrary to her interests. It stated that the alleged victim's failure to exhaust those remedies validated the disciplinary action ordered in Regional Education Office Resolution No. 03515 of December 5, 1995.

21. Finally, the State asserted that the petition does not state facts that tend to establish a violation of rights protected under the American Convention. It therefore asked the IACHR to declare the petition inadmissible under the terms of Article 47(b) of the American Convention.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

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

22. Under Article 44 of the Convention, the petitioner is authorized to file petitions. The alleged victim in the case was under the jurisdiction of the Peruvian State at the time the alleged events occurred. Furthermore, Peru ratified the American Convention on July 28, 1978. The Commission thus has competence *ratione personae* to examine the petition.

23. The Commission has competence *ratione loci* to take up the petition inasmuch as it alleges violations of rights protected by the American Convention, violations said to have occurred within the territory of a State party to the Convention.

⁷ The State's response, received August 9, 1999, paragraph 3.3.

24. The Commission also has competence *ratione temporis* inasmuch as the obligation to respect and ensure the rights protected by the American Convention was already binding upon the Peruvian State on the date when the events alleged in the petition were said to have occurred.

25. Finally, the Commission has competence *ratione materiae* to issue its finding on the alleged violations of the Convention-protected rights.

B. Exhaustion of domestic remedies

26. Article 46(1)(a) of the American Convention provides that in order for a case filed in accordance with Article 44 of the Convention to be admitted, 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 afford national authorities the opportunity to address the alleged violation of a protected right and, where appropriate, resolve it before the matter is brought to the attention of an international body. Within the appropriate time frame, the Peruvian State lodged the objection alleging a failure to exhaust domestic remedies.

27. Before examining the question of whether the present petition satisfies the rule requiring exhaustion of domestic remedies, it is important to point out that the original petition and additional communications refer to three different allegations: i) the conduct of the Peruvian court authorities in connection with the petition of *amparo* that Mrs. Alicia Alvarez Trinidad filed on June 30, 1995, ii) the supposed failure to comply with the ruling handed down by the Constitutional Tribunal on September 26, 1997, in which it delivered its decision on the petition of *amparo*, and iii) the disciplinary action that the Huánuco Regional Education Office took through Regional Education Office Resolution No. 03515 of December 5, 1995, whereby Mrs. Alicia Alvarez Trinidad was temporarily removed from her teaching position.

28. As to the first allegation, the petitioner maintained that the Constitutional Tribunal's ruling of September 26, 1997 in which it found her petition of *amparo* to be inadmissible, was based on documents falsified by the Huánuco Regional Education Office. She also alleged that the Justices of the Constitutional Tribunal acted in a biased manner and that the proceedings had extended beyond the deadline established in Peruvian law.

29. By the petitioner's own admission, the Peruvian legal system affords legal remedies to correct alleged violations of judicial guarantees, which she did not exercise because she believed they would be ineffective and too costly.⁸ The petitioner did not provide any concrete information to show the inefficacy of those remedies, nor did she say that she told the judges hearing her petition of *amparo* that her judicial guarantees had been violated. As for the alleged impossibility of pursuing judicial remedies because of the excessive financial costs involved, the Commission has previously observed that while this situation can be taken into account on a case-by-case basis when examining whether the rule requiring exhaustion of local remedies has been observed, it is up to the petitioner to describe the particular circumstances that made it impossible for her to pursue the appropriate judicial avenues.⁹

30. In this specific case, the petitioner simply made a generic reference to a supposed excessive cost of pursuing ordinary remedies, a remedy of *amparo* or a remedy seeking nullification of a fraudulent *res judicata*, but without describing the particular circumstances of her situation and the measures she attempted to be exempted from the court costs or obtain some kind of free legal aid.¹⁰ Furthermore, according to the information reported, the petitioner was represented by an attorney during the *amparo* proceedings.

⁸ See paragraph 13 above.

⁹ IACHR, Report No. 44/09, Petition 12,161, Peru, Ciro Abdías Boderó Arellano, March 27, 2009, para. 28; Report No. 45/09, Petition 12,079, Peru, María Mercedes Zapata Parra, March 27, 2009, para. 34.

¹⁰ *Idem*.

31. Concerning point ii), mentioned in paragraph 27 above, the IACHR is of the view that while the alleged victim did exhaust the judicial remedy with regard to her original request for reassignment, the Constitutional Tribunal, in a decision delivered on June 30, 1995, dismissed her petition, which precluded any enforcement of the judgment. Furthermore, the information available indicates that the petitioner did not pursue any other judicial remedies to challenge what she considered to be noncompliance with a court ruling.

32. As for point iii) mentioned in paragraph 27 above, the Peruvian State indicated that the petitioner did not pursue any administrative remedy, ordinary remedy or remedy of *amparo*, which it claimed would be the appropriate avenues to pursue to challenge the validity of Huánuco Regional Education Office Resolution No. 03515 dated December 5, 1995. The petitioner, for her part, asserted that she was not duly notified of the decision and therefore was unable to challenge it via any administrative or judicial recourse. She added that the magistrates who heard the petition of *amparo* she filed on June 30, 1995, should have ruled on the validity of Huánuco Regional Education Office Resolution No. 03515.

33. The petitioner did not present any concrete information concerning the correlation between the failure to notify her of Resolution No. 03515 and the alleged impossibility of challenging its validity. In any event, she claimed that once the Constitutional Tribunal learned of the resolution ordering disciplinary action, it should have ruled on the resolution's validity as part of the *amparo* process that began on June 30, 1995.

34. Based on the parties' allegations and the copies of portions of the case record that the IACHR has in its possession, it concludes that the petition of *amparo* filed on June 30, 1995 concerns an alleged violation of the constitutional rights to petition and to work, purportedly to the detriment of Mrs. Alicia Alvarez Trinidad by virtue of the Huánuco Regional Education Office's refusal to reassign her to a new post and an alleged failure to pay her wages between April and June 1995. At the time Huánuco Regional Education Office Resolution No. 03515 was issued, the Constitutional Tribunal was seized of a special appeal for nullification, filed by Mrs. Alicia Alvarez to challenge a decision delivered by the Civil Chamber of the Huánuco Superior Court on September 13, 1995, in which the petition of *amparo* was declared inadmissible.

35. Although the petitioner claimed to have informed the Constitutional Tribunal of the disciplinary action ordered in Resolution No. 03515, she did not allege –nor can it be inferred from the case file– that the validity of the resolution was ever challenged via either an ordinary or special judicial remedy. Furthermore, the IACHR is of the view that the petitioner did not adequately substantiate her claim that the Constitutional Tribunal should or even could have ruled on Resolution No 03515 in a decision on a special remedy seeking nullification, the object of which predated the very administrative resolution in this case.

36. Based on the foregoing considerations, the Commission considers that the alleged victim failed to exhaust the remedies under domestic law. Therefore, the petition was not filed in compliance with the requirement set forth in Article 46(1)(a) of the American Convention.

37. Consequently, the Commission declines to examine the remaining admissibility requirements set forth in the American Convention, as it has already established that the matter before the Commission has not been properly brought.¹¹

V. CONCLUSIONS

¹¹ IACHR, Report No. 135/09, Petition 291-05, Peru, Jaime Salinas Sedó, November 12, 2009; Report No. 42/09, Petition 443-03, Peru, David José Ríos Martínez, March 27, 2009; Report No. 87/05, Petition 4580/02, Peru, October 24, 2005; Report No. 73/99, Case 11.701, Mexico, May 4, 1999; Report No. 24/99, Case 11.812, Mexico, March 9, 1999; and Report No. 82/98, Case 11,703, Venezuela, September 28, 1998, and others.

38. Based on the arguments of fact and of law set forth above, the Commission considers that the petition is inadmissible under Article 46(1)(a) of the American Convention and therefore

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the present petition inadmissible under Article 46(1)(a) of the American Convention.
2. To notify the State and the petitioner of this decision.
3. To publish this decision and include it in the Annual Report to be presented to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 15th day of the month of March, 2010.
(Signed: Felipe González, President; Paulo Sérgio Pinheiro, First Vice-President; Dinah Shelton, Second Vice-President; María Silvia Guillén, José de Jesús Orozco Henríquez, and Rodrigo Escobar Gil, Commissioners).