

REPORT No. 14/10
PETITION 3576-02
INADMISSIBILITY
PERU
WORKERS DISMISSED FROM *LANIFICIO DEL PERÚ S.A.*
March 16, 2010

I. SUMMARY

1. On September 6, 2002, the Inter-American Commission on Human Rights (hereinafter "the Commission," "the IACHR" or "the Inter-American Commission") received a petition that Rubén Flores Fuentes, Agustín Medina Clavijo (deceased), Juan Calla Ccasa, Favio Alejandro Pérez Vargas, Luis Chevarria Serrano, Policarpio Nina Condori, Juan Manuel Pinto Perea, Juan Julio Bedoya Pinto (deceased), Francisco Valeriano Vilca, Sabina Bejarano Oviedo, Luzmila Ramos Peralta, Antonia Andrea Sánchez de Becerra and Inocencio Cayari Ancco (hereinafter "the petitioners" or "the alleged victims") lodged on their own behalf, in which they alleged that the Republic of Peru (hereinafter "Peru", "the Peruvian state" or "the State") had failed to guarantee full enforcement of a final *amparo* ruling dated May 15, 1995, in which the Supreme Court ordered that the alleged victims be reinstated to their jobs with the company *Lanificio del Perú S.A.* The petitioners added that the Supreme Court's ruling ordered the company to pay accrued benefits, an obligation that the lower courts obviated in the process of enforcing the judgment. Their contention is that this constitutes a violation of the rights protected in articles 8 and 1(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention").

2. The State, for its part, observed that the courts that heard the actions filed by the petitioners acted within their sphere of competence and in accordance with the labor laws in force. It pointed out that the Supreme Court's May 15, 1995 ruling did not contain any mandate regarding payment of accrued benefits and that this interpretation was confirmed by superior courts and tribunals of constitutional and labor law. Consequently, the State requested that the Commission declare the petition inadmissible under Article 47(b) and (c) of the American Convention.

3. After examining the positions of the parties, the Commission concluded that while it is competent to hear the petition, the latter is inadmissible because of a failure to satisfy the requirement stipulated in Article 46(1)(b) of the American Convention. The Commission decided to notify the parties of this inadmissibility report, to make it public and to include it in the Commission's Annual Report.

II. PROCESSING WITH THE COMMISSION

4. The petition was received at the IACHR on September 6, 2002, and registered as number P 3576-02. The petitioners presented additional information on August 12, 2004. On December 16, 2004, the IACHR forwarded the pertinent parts of the petition and additional communication to the State and, in keeping with its Rules of Procedure, advised the State that it had two months to submit its observations.

5. The State submitted its response on June 27, 2005, and sent the respective annexes on July 8 of that year. That documentation was sent to the petitioners on July 14, 2005. The petitioners filed additional submissions on June 14, 2005, August 4 and 31, 2005; October 24, 2007; September 25, 2008; and April 8 and December 1, 2009.

III. POSITIONS OF THE PARTIES

A. The petitioners

6. The petitioners alleged that on May 27, 1989, they were dismissed from the company *Lanificio del Perú S.A.* by reason of “staff reduction” provided for in Article 16 of Law No. 24514, which was in effect at that time. They stated that Article 24 of that law recognized the right of workers dismissed in a reduction in force to preferential treatment for reinstatement purposes, as follows:

Should the employer decide to hire new staff, the employer shall give preference to workers dismissed for the reason set forth in Article 16 and whose rank and qualifications might make them eligible for the positions being offered; Peruvian workers with more seniority shall have preference. To this end, such workers are to be advised via a written communication, sent to the address they have indicated; the communication shall specify the date of their reinstatement. The Administrative Authority for Labor shall be duly advised. The employer is required to show proof that the communication in question was delivered.

[...]

If these workers are disregarded and other staff hired instead, the workers thus excluded shall have a right to file a complaint with the Administrative Authority for Labor seeking their reinstatement. If the Authority orders their reinstatement, the workers shall be entitled to any remuneration they did not receive between the time they filed the complaint and the date of their reinstatement.¹

7. The petitioners argued that after being dismissed from the company *Lanificio del Perú*, the latter proceeded to hire new staff for the same positions. They therefore filed a complaint with the Ministry of Labor, in which they requested enforcement of Article 24 of Law 24514, cited above. They asserted that after the administrative authority passed a series of resolutions unfavorable to their cause, on August 2, 1993, they filed an *amparo* petition with the First Specialized Civil Court of Arequipa (hereinafter the “First Civil Court”). According to the petitioners, their case was dismissed in first and second instance, whereupon they filed an appeal on August 24, 1994 with the Supreme Court (hereinafter also the CSJ). They stated that on May 15, 1995, the Constitutional and Social Law Chamber of the CSJ ordered *Lanificio del Perú* to reinstate the alleged victims “in the manner prescribed by Article 24 of Law No. 24514”.

8. The petitioners pointed out that on April 20, 1998, they were reinstated by the company, but they were not given the classification and remuneration to which they were entitled. They added that in less than a month, *Lanificio del Perú* dismissed them again.²

9. The petitioners asserted that in the course of the enforcement of the May 15, 1995 ruling before the First Civil Court, they demanded payment of the salaries that they did not receive between the date of their dismissal in May 1989 and the date of their reinstatement at *Lanificio del Perú* in April 1998. They pointed out that this obligation follows the Supreme Court’s decision, where allusion is made to Article 24 of Law 24514.³

¹ Communication received from the petitioners on August 31, 2005, pp. 3 and 4, underlining is not in the original version.

² In a briefing received on September 6, 2002, the petitioners enclosed copies of the notarized letters that the company *Lanificio del Perú* sent to the alleged victims. The text of these letters reads as follows:

In compliance with the provisions of subparagraph f) of Article 16 and Article 21 of Supreme Decree 003-97-TR (Single Revised Text of Legislative Decree 728) [...] your contract of employment is terminated on the date this notarized letter is delivered.

We should point out that you have previously obtained your retirement pension, as you satisfied all the pension requirements; as a result, this company may not offer you employment as there is a conflict between collecting your retirement pension and wages simultaneously, as Legislative Decree 19990 provides. To avoid any liability, the company has decided to terminate your contract under the aforementioned terms.

³ See the underlined excerpt of Article 24 of Law 24514, transcribed in paragraph 6 above.

10. The petitioners observed that the requests seeking payment of accrued benefits were all denied by the First Civil Court and by the Civil Chamber of the Arequipa Superior Court. These two courts held that the Supreme Court's May 15, 1995 ruling required only that the defendant company reinstate the dismissed workers, and contained no specific mandate ordering payment of wages and benefits. The petitioners stated that in its ruling of May 14, 1998, the First Civil Court held that

[T]he definitive ruling handed down by the Supreme Court, which is the court of last resort that ultimately decides the *amparo* suit, does not contain an express and exigible obligation to pay the accrued amounts being claimed by the plaintiffs. Therefore, that being the case, THE REQUEST IS DISMISSED. Furthermore: their claims should be addressed in the proper jurisdiction.⁴

11. As the First Civil Court and Superior Court denied the petitioners' motions seeking payment of employment benefits; they brought ordinary actions to assert the same claims.⁵ They alleged that their cases were dismissed at every level within the labor law jurisdiction. The copies of excerpts from the case records, which the petitioners supplied, indicate that the labor courts of the Arequipa Superior Court based their findings on the following: i) the employment relationship between the alleged victims and the defendant company was terminated by mutual rescission, under a collective labor agreement dated May 27, 1989; ii) that such a situation is not within the scope of Article 24 of Law 24514, which, according to the labor courts' decisions, apply only to workers who have been fired; and iii) that under Article 45 of Decree Law 19990, the alleged victims, as workers on pensions from the Peruvian Social Security Institute, would be prohibited from performing remunerated work and collecting the respective benefits.⁶

12. As for the dismissal of the action brought by Favio Pérez Vargas, Antonia Andrea Sánchez Silva, Juana Rosa García Salas, Agustín Medina Clavijo, Juan Calla Casa and Juan Pinto Perea, the Second Corporate Court Specialized in Labor Law wrote the following on March 30, 2001:

[T]he Supreme Court's definitive ruling, dated May 15, 1995, did not examine whether any accrued wages and social benefits are owed, and certainly did not issue any ruling on the matter, as this would not be a proper subject for an action seeking protection of rights; the proper venue would be a labor proceeding [...] we ought not lose sight of the fact that the analysis done of the actions seeking [*amparo*] relief was a function of the violation of a constitutional right (job stability), but not a function of or from the angle of labor law. Approaching the issue from that perspective would have determined whether the conditions stipulated in the final paragraph of Article 24 of Law 24514 for payment of accrued wages were present.⁷

13. The petitioners stated that once they had exhausted the avenues available in the labor law jurisdiction, they turned once again to the Arequipa Civil Courts, filing a request on January 9, 2002 seeking payment of accrued wages and benefits. The information available indicates that on January 15, 2002, Arequipa's Fifth Court Specialized in Civil Law denied the claim, holding yet again that the Supreme Court's definitive ruling contained no specific mandate ordering payment of accrued wages. The petitioners filed a petition seeking reversal of the ruling, which was declared inadmissible on March 1, 2002. On March 7, 2002, alleged victim Agustín Medina Clavijo filed an appeal, which Arequipa's Fifth Civil Court dismissed on March 11 of that year. That court held that a decision to deny a petition seeking

⁴ Communication received from the petitioners on August 12, 2004, annexes, Decision No. 58-98 which Arequipa's First Court Specialized in Civil Law delivered on May 14, 1998, case file No. 07-93.

⁵ According to the petitioners' statements of the facts and the attached copy of the courts records, alleged victim Francisco Valeriano Vilca did not file an ordinary action with the labor courts.

⁶ Communication received from the petitioners on August 12, 2004, annexes, ruling that the Third Labor Court of the Arequipa Superior Court delivered on October 12, 2000, on the ordinary action brought by Patricio Huaranca Mirano, Rubén Flores Fuentes, Juan Bedoya Pinto, Inocencio Cayari Ancco and Luzmila Melina Ramos; and the ruling that the First Court Specialized in Labor Law of the Arequipa Superior Court delivered on November 30, 2000, ordinary action brought by Luis Chevarría Serrano, Sabina Bejarano Oviedo, Policarpio Nina Condori, Basilio Portugal Cruz and Nicolás Zea Chávez.

⁷ Communication received from the petitioners on August 12, 2004, annexes, judgment that the Second Court Specialized in Labor Law of the Arequipa Superior Court delivered on March 30, 2001, ordinary action brought by Favio Pérez Vargas, Antonia Andrea Sánchez Silva, Juana Rosa García Salas, Agustín Medina Clavijo, Juan Calla Casa and Juan Pinto Perea.

reversal of a decision is not subject to appeal. Later, eight of the thirteen alleged victims filed a remedy of complaint and a remedy of cassation, both of which were dismissed by the Arequipa Superior Court in March and April of 2002. In the ruling in which the remedy of cassation is denied, the Arequipa Superior Court reiterated what Arequipa's Fifth Civil Court had held, which was that "the final part of article 363 of the Code of Civil Procedure provides that the order that decides the action seeking reversal [which in this case was delivered on March 1, 2002] is not subject to challenge."⁸

14. Based on the facts outlined above, the petitioners argued that the Peruvian state violated Article 8 of the American Convention, in relation to Article 1(1) thereof.

B. The State

15. The State's account of the decisions that the First Civil Court, the Civil Chamber of Arequipa, and the Supreme Court delivered on the petition of *amparo* filed on August 2, 1993, is similar to the one provided by the petitioners.⁹ The State, however, maintained that the termination of the employment relationship between the alleged victims and *Lanificio del Perú* did not happen by virtue of their dismissal; instead, it was done through a collective labor agreement dated May 27, 1989, between the company and the Lanificio Textile Workers Union and approved by Sub-Directorial Resolution 209-89-DT-Arequipa, dated July 13, 1989, in accordance with the applicable labor law.

16. The State observed that in the enforcement of the Supreme Court's ruling of May 15, 1995, the First Civil Court ordered the defendant company to reinstate the alleged victims. It pointed out that after both parties filed a series of challenges with respect to the actual content of the judgment delivered by the Supreme Court, *Lanificio del Perú* reinstated the alleged victims on April 20, 1998. It pointed out that on April 23, 1998, Arequipa's First Civil Court ordered that the case record be closed as it held that the defendant company had complied with the definitive handed down by the Supreme Court on May 15, 1995.

17. According to the State, in May 1998 the alleged victims petitioned the First Civil Court for payment of the wages and social benefits that had accrued since the date on which their employment relationship with *Lanificio del Perú* ended. It pointed out that on May 14, 1998, the Civil Court dismissed the alleged victims' claim, stating that the Supreme Court's May 15, 1995 ruling confined itself to protect the petitioners' right to be reinstated in their jobs, but did not go to the question of payment of benefits. The State emphasized that, under domestic law, a writ of *amparo* does not create rights, and that persons seeking to collect social benefits must do so by means of an ordinary labor law action. It asserted that the same reasoning was expressed both by Arequipa's First Civil Court and Civil Chamber when they acted to enforce the May 15, 1995 ruling.

18. The State also asserted that when the claim seeking payment of benefits was dismissed during the enforcement of the *amparo* ruling, the alleged victims brought three separate ordinary actions, all of which were dismissed in the labor courts. It asserted that on June 1, 1998, Patricio Huaranca Mirano, Rubén Flores Fuentes, Juan Bedoya Pinto, Inocencio Cayari Ancco and Luzmila Melina Ramos filed a labor action, which Arequipa's Third Labor Law Court dismissed on October 12, 2000. On July 23, 2001, the Supreme Court, acting as court of final instance, dismissed the action by holding that the remedy of cassation was inadmissible.

19. The State further asserted that Luis Chevarría Serrano, Sabina Bejarano Oviedo, Policarpio Nina Condori, Basilio Portugal Cruz and Nicolás Zea Chávez also filed labor actions, which

⁸ Communication received from the petitioners on September 25, 2008, annexes, Arequipa Superior Court Definitive Order No. 0142-2002-3SC, case No 2002-050-0-0401-SC03, April 2, 2002, p.1, emphasis not in the original version. As for the underlined expression, a reading of the judgment suggests that what the Arequipa Superior Court intended to say was that "the order deciding the remedy seeking reversal is not subject to challenge."

⁹ See paragraph 7 above.

Arequipa's First Court Specialized in Labor Law dismissed on November 30, 2000. The State reported that Arequipa's Superior Court upheld this decision on March 30, 2001.

20. It indicated that Favio Pérez Vargas, Antonia Andrea Sánchez Silva, Juana Rosa García Salas, Agustín Medina Clavijo, Juan Calla Casa and Juan Pinto Perea also filed an ordinary action seeking payment of accrued wages and social benefits, which the Second Specialized Corporate Court declared to be without merit on March 30, 2001.

21. The State underscored the fact that every judicial authority who presided over the labor actions brought by the alleged victims declared the case for payment of accrued wages to be without merit. It further argued that the domestic courts acted within their sphere of competence and in accordance with the relevant laws, and that no judicial guarantees were violated. In this regard, it observed that it is not the function of the IACHR to review or interpret judicial decisions adopted on any petition of *amparo* or labor demands brought by the alleged victims. It therefore requested that the petition be declared inadmissible on the grounds of Article 47(b) and (c) of the American Convention.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. The Commission's competence *ratione personae*, *ratione materiae*, *ratione temporis* and *ratione loci*

22. The petitioners are authorized by Article 44 of the American Convention to lodge petitions with the IACHR. The alleged victims named in the petition are natural persons whose Convention-protected rights Peru undertook to respect and ensure. The Commission, therefore, has competence *ratione personae* to examine the petition.

23. The Commission is competent *ratione materiae* and *ratione loci* because the petition alleges violations of rights protected by the American Convention, said to have occurred within the territory of a State party to that instrument.

24. Lastly, the Commission is competent *ratione temporis* inasmuch as the obligation to respect and ensure the rights protected under the American Convention was already binding upon the State on the date that the events alleged in the petition were said to have occurred.

B. Other requirements for the petition to be admissible

1. Exhaustion of domestic remedies and time period for lodging the petition

25. Article 46(1)(a) of the American Convention provides that for a complaint lodged with the Inter-American Commission in accordance with Article 44 of the Convention to be admissible the 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 domestic authorities to take cognizance of the alleged violation of a protected right and, if appropriate, resolve the matter before it is heard in an international venue.

26. Article 46(1)(b) provides that for the Commission to admit a petition, it must be lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment.

27. In the instant case, although the State described the procedures followed in the domestic judicial bodies, it did not assert the exception of failure to exhaust domestic remedies and thereby tacitly waived its right to make that defense argument.

28. The petitioners maintained that while the Supreme Court's final ruling of May 15, 1995 contained a mandate ordering payment of accrued wages and benefits, the interpretation of the First Civil Court and of the Civil Chamber of Arequipa was that the ruling in question confined itself to the right to

reinstatement. In this sense, the petitioners alleged a failure to enforce the judgment, which brought them to institute two judicial proceedings, different in nature.

29. On the one hand, they filed a motion with Arequipa's First Civil Court, in the context of the enforcement of *amparo* ruling proceedings. The available information indicates that in a ruling dated May 23, 1996, that court declared the alleged victims' claim to be inadmissible and held that the *amparo* ruling had confined itself to the issue of *Lanificio del Perú's* obligation to reinstate the alleged victims.¹⁰ In a ruling dated April 23, 1998, and reiterated on May 14 of that year, the First Civil Court ordered the record of the *amparo* suit to be closed, reasoning that the defendant company had complied with the Supreme Court's order by reinstating the alleged victims in their jobs. In the May 14, 1998 decision, the court reiterated that the alleged victims' claim seeking payment of accrued wages and benefits was inadmissible.

30. Furthermore, given the decision taken by Arequipa's First Civil Court to close the record on the case, twelve of the thirteen alleged victims filed three separate ordinary actions claiming *Lanificio del Perú's* failure to honor its obligation to pay the benefits and wages. Both parties claim that the labor courts dismissed these actions between March and July 2001, leaving no other remedies to be exhausted.

31. Given the language of the Supreme Court's May 15, 1995 final ruling, which makes no specific reference to payment of accrued wages and benefits, and considering the other factual information reported by the parties, which includes references to a collective labor agreement reached in May of 1989 and an assertion that the alleged victims were collecting pensions, the Commission is unable to establish *prima facie* any disparity between the Supreme Court's final ruling and the rulings of the civil and labor courts of the Arequipa Superior Court. Although the petitioners contend that there was a disparity, their goal in the judicial remedies pursued in the enforcing of *amparo* ruling proceedings and the ordinary labor actions was to collect wages and social benefits that they believed they were owed. Nothing in the case records suggests that an inconsistency between the Supreme Court's May 15, 1995 final decision and the rulings delivered thereafter by the Arequipa civil and labor courts was ever contended as such in a specific judicial action. According to the petitioner's allegations, they were assisted by attorneys of their choosing during the *amparo* and ordinary labor proceedings.

32. On January 9, 2002, several months after the three ordinary actions were dismissed by labor judges of the Arequipa's Superior Court, eight of the thirteen alleged victims filed a request before the Arequipa Specialized Civil Court, seeking enforcement of the Supreme Court's May 15, 1995 ruling, in what they considered to encompass the right to accrued wages and benefits. This request was dismissed on January 15, 2002, which brought the alleged victims to file a motion for reversal of decision and an appeal. Arequipa's Fifth Specialized Civil Court dismissed both motions seeking reversal of the decision and the appeal. The Arequipa Superior Court further dismissed the remedies of complaint and cassation raised by the alleged victims.¹¹

33. The IACHR observes that the request dated January 9, 2002, was filed with the very same court –Arequipa's Specialized Civil Court – that on May 14, 1998, had already ordered the close of the enforcement proceedings concerning the CSJ *amparo* judgment. In a ruling of May 23, 1996, reiterated on April 23 and May 14, 1998, that same court had declared the petition seeking payment of wages and social benefits inadmissible. Therefore, the IACHR considers that the request that the alleged victims filed with the Arequipa Civil Court on January 9, 2002, for claims that had already been dismissed in the process of enforcing the *amparo* ruling –a case closed since May 1998 – is not a suitable remedy for purposes of the requirement set forth in Article 46(1)(a) of the Convention.

¹⁰ Communication received from the petitioners on August 12, 2004, annexes, Decision (no number) dated May 23, 1996, delivered by Arequipa's First Court Specialized in Civil Law, Case file No. 07-93.

¹¹ Communication received from the petitioners on September 25, 2008, annexes, Arequipa Superior Court, Final Ruling No. 0142-2002-3SC, case No 2002-050-0-0401-SC03, April 2, 2002.

34. Based on the foregoing considerations, the IACHR concludes that the judicial remedies were exhausted between March and July 2001, with the definitive rulings delivered on the labor actions filed by the alleged victims. Considering that the present petition was received on September 6, 2002, the IACHR concludes that the requirement stipulated in Article 46(1)(b) of the American Convention has not been met.

35. 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.¹²

V. CONCLUSIONS

36. Based on the arguments of fact and of law set forth above, the Commission deems that the petition is inadmissible under Article 46(1)(b) of the American Convention. Therefore,

¹² 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 1,701, 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.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the present petition inadmissible under Article 46(1)(b) of the American Convention.
2. To notify the State and the petitioners 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 16th 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).