

REPORT No. 138/10

PETITION 12.363

ADMISSIBILITY

JUAN JOSÉ MEZA

ECUADOR

November 1, 2010

I. SUMMARY

1. On February 15, 2001 the Inter-American Commission on Human Rights (hereinafter “the Commission”) received a petition filed by Juan José Meza and Carlos S. Díaz Guzmán (hereinafter “the petitioners”) alleging responsibility on the part of the Republic of Ecuador for failure to enforce the decision issued by the First Chamber of the Superior Court of Justice of Guayaquil dated April 24, 1996, which would have affected payment of salaries and benefits that the Club Sport Emelec owed to Juan José Meza. The petitioners allege that the judges responsible for enforcing the decision acted with partiality in favor of the Club Sport Emelec and delayed and distorted the enforcement process, which constitutes a violation of due process guarantees.

2. The petitioners alleged that the State was responsible for violating the rights to judicial guarantees and judicial protection established in Articles 8(1) and 25 of the American Convention on Human Rights (hereinafter the “Convention” or the “American Convention”). They also alleged that the requirement of prior exhaustion of domestic remedies provided in Article 46(1)(a) of the American Convention has been met. For its part, the State alleged that the petitioners’ claims were inadmissible due to a failure to exhaust domestic remedies and because the petitioners were trying to use the jurisdiction of the Inter-American Commission as a fourth instance.

3. After analyzing the positions of the parties and satisfaction of the requirements provided in Articles 46 and 47 of the American Convention, the Commission decided to declare admissible the complaints regarding the alleged violation of Articles 8(1) and 25 as they relate to Article 1(1) of the American Convention, to notify the parties, and to order the publication of the report in its Annual Report to the General Assembly.

II. PROCESSING BY THE COMMISSION

4. The Commission recorded the petition under number 12.363 and proceeded on February 16, 2001 to forward copy of the relevant sections to the State, allowing it a period of 90 days to submit information in accordance with Article 34 of the Rules of Procedure in force. On July 30, 2001 the State submitted its response to the Commission, which was sent to the petitioners for their observations. On September 21, 2001 the Commission received a brief containing the petitioners’ observations, which was forwarded to the State for its observations.

5. On October 18, 2001 the Commission received a brief from the petitioners with additional information, which was forwarded to the State for its observations. On June 26, 2003 the Commission received a brief from the petitioners in which they indicated their desire to reach a friendly settlement, which was forwarded to the State for its observations. On April 3, 2007 the Commission received a brief from the petitioners, which was forwarded to the State for its observations. On May 4, 2009 the Commission reiterated its requests to the State for information dated December 3, 2003 and May 21, 2007.

6. On July 9, 2009 the Commission received a brief from the State, which was forwarded to the petitioners for their observations along with a request for updated information. On December 22, 2009 the Commission received a brief containing the petitioners’ observation, which it forwarded to the State for its observations. On February 12, 2009 the State asked for an extension, which was granted by the Commission. On April 7, 2010 the State submitted its observations, which were forwarded to the petitioners for their information.

III. POSITIONS OF THE PARTIES

A. The petitioners

7. The petitioners allege that the courts allowed and participated in abuse and denial of justice in a private contractual dispute to the detriment of the Argentine soccer player Juan José Meza. They allege that on November 19, 1991 Juan José Meza filed a labor complaint for unjustified dismissal against the Club Sport Emelec. The complaint worked its way through multiple levels of judicial consideration, and on April 24, 1996 the First Chamber of the Superior Court of Justice of Guayaquil issued a decision in Juan José Meza's favor. The decision ordered payment of both the bonus established in the labor contract and the unpaid compensation with a triple surcharge.

8. The petitioners indicate that after the ruling of the First Chamber of the Superior Court of Justice of Guayaquil was handed down, the matter then entered into a prolonged process execute the judgment and calculate the amounts of the bonus and the unpaid compensation with a triple surcharge. They claim that the defendants abused the judicial process and that judicial authorities both allowed it to happen and participated directly in actions to delay and reduce the amount of the judgment, such as ordering additional expert reports allegedly not contemplated in the labor process so as to reverse an authorized expert report in the plaintiff's favor and providing opportunities for the defense to file additional submissions allegedly not contemplated in the procedure.

9. The petitioners also allege that in the evidence submitted by the respondent the signatures of the alleged victim were forged, which was demonstrated by expert testimony provided in the process by the petitioners on April 30, 1992. However, they indicate that the judicial authorities took no action in this regard.

10. They allege that the enforcement of the ruling was assigned to the Fourth Labor Court of Guayas, which appointed a settlement expert to issue a report. They state that the expert submitted the report on July 3, 1996, in which she concluded that the alleged victim was owed 27,000 dollars for the bonus and 81,000 dollars for unpaid compensation with the triple surcharge, which when added to the other items owed and settled amounted to approximately 217,000 dollars.

11. The petitioners allege that on July 22, 1996 the defense for the Club Sport Emelec submitted a brief seeking suspension of the procedure to approve the expert's report given that its client was taking steps in the Republic of Argentina to prove the death of Juan José Meza in a traffic accident, which was denied by the alleged victim.

12. They allege that on August 19, 1996 the Fourth Court unexpectedly appointed a new expert to submit another enforcement report. They state that the expert submitted the report on August 23, 1996 in which she omitted the 27,000 dollars for the bonus and the 81,000 dollars for unpaid compensation with the triple surcharge, which added to the other items owed and settled amounted to approximately 33,000 dollars. They indicate that in a ruling dated September 20, 1996 the Fourth Court accepted and approved the enforcement report, which altered the judicial decision issued by the First Chamber of the Superior Court of Justice of Guayaquil. They allege that in response to this, an appeal was filed against the ruling approving the enforcement report and that on June 19, 1997 the First Chamber of the Superior Court of Justice of Guayaquil ordered that the ruling be revoked in that payment there under would be incomplete.

13. The petitioners allege that the First Chamber of the Superior Court of Justice of Guayaquil ordered the lower court to carry out what was ordered in the decision of April 24, 1996 and to provide for payment of 27,000 dollars for the bonus and 81,000 dollars for unpaid compensation with the triple surcharge. They state that the defense for the Club Sport Emelec, abusing the law, filed a cassation appeal, which was rejected on April 19, 1999 by the Second Chamber for Labor and Social Matters of the Supreme Court.

14. They alleged that once the proceeding was resubmitted to the Fourth Labor Court of Guayas for enforcement, that court issued a ruling on June 28, 1999 settling the amounts, including the bonus and the triple surcharge on unpaid compensation. They allege that on July 19, 1999 the Court inexplicably issued a new ruling with a new settlement that omitted the bonus and the triple surcharge on unpaid compensation.

15. They state that in response the attorney representing the alleged victim filed a complaint against the Fourth Labor Court of Guayas with the National Judicial Council. In a ruling dated March 24, 2000 the Council found that

the conduct of Judge Advocate Campos constitutes a repeated distortion and failure to do what she had been expressly ordered to heed and do, incurring disrespect for the decision issued by a higher court, outside the procedural and jurisdictional autonomy invoked by the accused.

As a result, the National Judiciary Council sanctioned the Judge Advocate with a monetary penalty of 50% of her basic salary. The petitioners state that despite the sanction, on September 10, 1999 the Fourth Labor Court of Guayas admitted the appeal filed by the Club Sport Emelec, even though the ruling of June 19, 1997 had already become final and was no longer subject to appeal. They state that jurisdiction to rule on the appeal fell to the First Chamber of the Superior Court of Justice of Guayaquil.

16. The petitioners allege that they filed seven briefs with the First Chamber of the Superior Court of Justice of Guayaquil to have the rulings submitted to the Enforcement Court so that it would proceed to enforce the decision, due to the fact that the appeal granted was illegal. They allege that the attorney defending the Club Sport Emelec asked the Chamber of Associate Judges to postpone processing by the lead Chamber, which was granted. They indicate that on October 17, 2000 the courthouse post box belonging to the attorney representing the alleged victim was broken into and all notices deposited as of that date were stolen, including the decision of the Chamber of Associate Judges. They state that in view of this the petitioners were extra-officially informed of the decision of the Chamber of Associate Judges of October 16, 2000, which resolved the appeal filed and omitted the bonus and the triple surcharge on unpaid compensation and also deemed that an exchange rate from ten years earlier should be used instead of the exchange rate in effect on the date of payment.

17. They allege that since the decision of April 24, 1996 was again altered by a ruling dated October 16, 2000, a cassation appeal was filed on December 19, 2000, which was granted on January 23, 2001. However, they allege that on June 1, 2001 the Chamber of Associate Judges of the First Chamber of the Superior Court of Justice of Guayaquil revoked admission of the appeal. They allege that a *de facto* recourse (*recurso de hecho*) and petition for nullification were filed but were denied on August 7, 2001 and April 7, 2003 respectively.

18. They allege that in a ruling of June 30, 2004 the Second Labor Chamber of the Superior Court of Justice of Guayaquil declared the nullification of all actions taken by the Chamber of Associate Judges of the First Chamber of the Superior Court of Justice of Guayaquil. They state that the Second Labor Chamber of the Superior Court of Justice of Guayaquil ordered that the case be referred to the lower court for enforcement of the decision.

19. The petitioners allege that on January 24, 2005 the Fourth Labor Court proceeded to settle the items in the decision of April 24, 1996, including the bonus and the triple surcharge on unpaid compensation, which added to the other items owed amounted to approximately 366,000 dollars. However, they indicate that on March 10, 2005 the same Fourth Court proceeded to alter the decision and omitted those items, which added to the other items owed and settled amounted to approximately 27,700 dollars. They indicate that they filed an appeal for nullification, which was denied on July 18, 2005. They allege that they filed an administrative complaint against the Fourth Judge with the Judicial Council of Ecuador, which in a ruling of March 28, 2006 found that:

Procedural action fails to carry out what is ordered in the final decision of April 24, 1996 and the ruling of June 19, 1997, issued by the First Chamber of the Superior Court of Justice of Guayas [...]

ordering payment of amounts for the bonus established in [...] the contract that is the subject of the dispute

and sanctioned the judge with a base salary fine.

20. They state that in a ruling dated August 25, 2006 and reported on August 28, 2006, the Fourth Labor Judge proceeded to settle interest due in order to calculate the final balance owed to Juan José Meza. The final balance omitted the bonus and the triple surcharge on unpaid compensation, which added to the other items owed and settled amounted to approximately 29,300 dollars. They state that the final balance was allocated by the Club Sport Emelec and on August 31, 2006 the Fourth Judge ordered that the alleged victim appear to withdraw the balance. They allege that on the same date, August 31, 2006, they sought revocation of the order reported on August 28, 2006 and the alleged victim appeared to withdraw the balance. They allege that, after 17 pleadings, on May 9, 2007 the Fourth Court proceeded to transfer to the counterpart the petition for revocation and on May 28, 2007 the Fourth Court ordered that the case be sent to the archives.

21. They allege that the irregularities committed during the enforcement phase of the labor case, the unwarranted delay in the conduct of the process, and the lack of impartiality on the part of the judicial officers who heard the case have resulted in the violation of the rights to judicial guarantees and judicial protection protected in the American Convention to the detriment of Juan José Meza.

22. With respect to the admissibility of the complaint and particularly with respect to the exhaustion of domestic remedies, the petitioners allege that those remedies were exhausted with the second instance decision issued by the First Chamber of the Superior Court of Justice of Guayaquil on April 24, 1996 and the enforcement order of June 19, 1997.

23. Regarding the State's allegation that they are seeking to use the Commission as a court of fourth instance (see III.B below), the petitioners allege that the Commission has indicated in its jurisprudence that it is empowered to "adjudicate irregularities of domestic judicial proceedings which result in manifest violations of due process or of any of the rights protected by the Convention."¹

B. The State

24. In response the petitioners' complaint, the State argues that the alleged victim made full use of the various remedies available under Ecuadorian law and that the fact that those remedies were unfavorable to the petitioners does not make them ineffective. It alleges that the petitioners are trying to use the Commission as a fourth instance court, in that they limit themselves to alleging that the decision is incorrect and unjust but not to proving that the judicial decision was issued without adherence to the limits of due process.

25. In this regard, the State indicates that in order for the Commission to be able to rule on irregularities in judicial proceedings, the requirements defined in the American Convention must be taken into account, i.e., that "if they presented information establishing that the trial was not impartial because the judges were corrupt, or were biased for racial, religious, or political reasons against them, the Commission would be competent to examine the case under Articles 8, 21, and 25 of the Convention."²

26. Regarding the requirement on prior exhaustion of domestic remedies as established in Article 46(1)(a) of the American Convention, the State alleges that the framework of the new Constitution has incorporated new jurisdictional guarantees to which individuals may have recourse when they believe that their rights have been violated, namely the action for protection (Article 88 of the Constitution of

¹ The petitioners refer to IACHR, Report No. 39/96, Case 11.673, *Santiago Marzioni*, Argentina, October 15, 1996, para. 61.

² The State refers to IACHR. Report No. 39/96, Case 11.673, *Santiago Marzioni*, Argentina, October 15, 1996, para. 62.

2008³), action for failure to act (Article 93 of the Constitution of 2008⁴) and the extraordinary action for protection (Article 94 of the Constitution of 2008⁵). In view of the above, the State alleges that the petitioners still had available to them judicial remedies that should be attempted before petitioning the Inter-American Commission on Human Rights.

27. Finally, based on the above considerations, the State asks the Commission to declare the petition inadmissible.

³ The State refers to Article 88 of the Constitution: "the action for protection shall seek the direct and effective protection of the rights protected in the Constitution, and may be filed when there is a violation of constitutional rights, due to acts or failures to act by any non-judicial governmental authority; against government policies when they suppose the deprivation of the enjoyment or exercise of constitutional rights; and when the violation proceeds from a specific individual, if the violation of the right causes serious damage, if he provides improper public services, if he acts by delegation or concession, or if the person affected is in a subordinate, indefensible, or discriminatory position." Official letter 13215 of the Office of the Attorney General dated March 30, 2010, sent via Note. 4-2-109/2010 of April 4, 2010.

⁴ The State refers to Article 93 of the Constitution: "the action for failure to act shall seek to guarantee the implementation of the laws that make up the legal system, as well as the enforcement of decisions or reports from international human rights organizations, when the law or decision whose implementation is sought contains an express, clear, and binding obligation to do or not do something. The action shall be filed with the Constitutional Court." Official letter 13215 of the Office of the Attorney General dated March 30, 2010, sent via Note No. 4-2-109/2010 of April 4, 2010.

⁵ The State refers to Article 94 of the Constitution: "the extraordinary action for protection shall be admissible against final decisions or orders in which rights recognized in the Constitution have been violated through action or failure to act, and they shall be filed with the Constitutional Court. The remedy shall be admissible when ordinary and extraordinary remedies have been exhausted within the legal timeframe, unless the failure to file these remedies was attributable to the person holding the violated constitutional right." Office letter 13215 of the Office of the Attorney General dated March 30, 2010, sent via Note No. 4-2-109/2010 of April 4, 2010.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

28. In principle, the petitioners are authorized by Article 44 of the American Convention to submit petitions to the Commission. The petition indicates as the alleged victim an individual with respect to whom the Ecuadorian state committed to respect and guarantee the rights enshrined in the American Convention. As regards the State, the Commission points out that Ecuador has been a State Party to the American Convention since December 8, 1977, the date on which it deposited its instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition.

29. The Commission is also competent *ratione loci* to hear the petition in that it alleges violations of rights protected in the American Convention that took place within the territory of Ecuador, a State Party to that treaty. The Commission is competent *ratione temporis* in that the obligations to respect and guarantee the rights protected in the American Convention were already in effect for the State on the date when the events alleged in the petition occurred. Finally, the Commission is competent *ratione materiae* because the petition denounces violations of human rights protected by the American Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

30. Article 46(1)(a) of the American Convention requires the prior exhaustion of the remedies available domestically in accordance with generally recognized principles of international law, as a requirement for the admission of complaints regarding the alleged violation of the American Convention. The purpose of this requirement is to allow domestic authorities to learn of the alleged violation of a protected right and, if appropriate, to resolve it before it is heard by an international body. In the instant case, the petitioners allege that the remedies provided by the domestic jurisdiction have been exhausted, which means the second instance decision of the First Chamber of the Superior Court of Justice of Guayaquil issued on April 24, 1996 in the labor proceeding initiated by Juan José Meza and the mechanisms intended to ensure the enforcement of that decision. For its part, the State alleges that additional remedies exist that were not invoked.

31. The case file indicates that once the decision was final its enforcement was the responsibility of the Fourth Labor Court of Guayas, which appointed a settlement expert to submit an enforcement report. The report was submitted on July 3, 1996 and concluded that the alleged victim was owed 27,000 dollars for the bonus and 81,000 dollars for unpaid compensation with a triple surcharge. On August 19, 1996 the Fourth Court appointed a new expert who submitted an enforcement report on August 23, 1996, which omitted the 27,000 dollars for the bonus and the 81,000 dollars for unpaid compensation with triple surcharge. In a ruling dated September 20, 1996 the Fourth Court accepted and approved the enforcement report. In response, the petitioners filed an appeal and on June 19, 1997 the First Chamber of the Superior Court of Justice of Guayaquil decided to revoke the ruling because the settlement would be incomplete.

32. The Commission has in the past indicated that in order to meet the requirement of prior exhaustion, petitioners must only exhaust suitable remedies, i.e., the remedies available and effective for remedying the situation being denounced. The Commission notes that from the moment of the second instance decision from the First Chamber of the Superior Court of Justice the petitioners made various efforts, notably many petitions to the courts, in order to achieve enforcement of the decision. In the instant case regarding a contractual dispute between two parties, suitable remedies were the labor complaint heard in the various bodies as well as the enforcement process.

33. For its part, the State points out that there are new jurisdictional guarantees to which individuals may have recourse when they believe that their rights have been violated, namely the action for protection (Article 88 of the Constitution of 2008), the action for failure to act (Article 93 of the

Constitution of 2008), and the extraordinary action for protection (Article 94 of the Constitution of 2008). In this regard, the Commission notes that these actions were established in the Constitution enacted in 2008, i.e., 12 years after the decision of April 24, 1996, so they would not have been suitable for resolving the complaint submitted by the petitioners.

34. In the instant case, it is not evident and the State has not substantiated why it would be reasonable to require the petitioners to file independent and additional remedies in order to achieve enforcement of what was ordered in the decision.

35. Therefore, given the characteristics of the complaint that is the subject of the instant case and the alleged failure to enforce the decision of April 24, 1996 and the order of June 19, 1997 in favor of Juan José Meza, as well as the fact that the enforcement process lasted from July 1996 until the archiving of the case on May 28, 2007, the Commission believes that the domestic remedies were exhausted with the decision to archive the case issued on March 28, 2007, so that the petitioners' complaint meets the requirement of prior exhaustion of domestic remedies provided in Article 46(1)(a) of the American Convention.

36. Article 46(1)(a), due to its nature and purpose, is a provision with autonomous content *vis à vis* the substantive provisions of the Convention. Therefore, the determination regarding the exhaustion of domestic remedies that are applicable to the case in question must be made prior to and separate from the analysis of the merits of the matter, in that it depends on a standard of assessment different from that used to determine the possible violation of Articles 8 and 25 of the American Convention. It should be made clear that the causes and effects of the exhaustion of judicial remedies to which reference has been made shall be analyzed in the report the Commission adopts on the merits of the dispute, in order to determine whether they constitute violations of the American Convention.

2. Deadline for submitting the petition

37. The American Convention establishes that in order for a petition to be admitted by the Commission it must be submitted within a period of six months of the date when the alleged injured party was notified of the final decision. Article 32 of the Rules of Procedure of the Commission establishes that in cases where exceptions to the prior exhaustion of domestic remedies are applicable, the petition must be submitted within a reasonable period of time in the judgment of the Commission. To this end, the Commission must consider the date when the alleged violation of rights occurred and the circumstances of each case.

38. The Commission notes that the petition was received on February 15, 2001; that the events covered by the complaint occurred starting on November 19, 1991, the date on which the alleged victim filed a labor complaint for unjustified dismissal against the Club Sport Emelec; that on April 24, 1996 the second instance decision was issued by the First Chamber of the Superior Court of Justice of Guayaquil; and that the enforcement process lasted from July 1996 to the archiving of the case on May 28, 2007. Therefore, in view of the context and the characteristics of the instant case as well as the measures taken by the petitioners since the decision in order to achieve its enforcement, the Commission believes that the petition was submitted on a timely basis and that the admissibility requirement regarding the deadline for submission should be considered satisfied.

3. Duplication of proceedings and international *res judicata*

39. The case file does not indicate that the subject of the petition is pending in any other international proceeding or that it reproduces a petition already examined by this or any other international body. Therefore, it is appropriate to consider the requirements established in Articles 46(1)(c) and 47(d) of the Convention as having been met.

4. Characterization of the alleged facts

40. Given the elements of fact and law submitted by the parties and the nature of the case presented for hearing by the Commission, the Commission finds it appropriate in the instant case to establish that the allegations of the petitioners regarding the alleged irregularities committed during the enforcement phase of the labor case, the supposed unwarranted delay in the conduct of the process, and the alleged lack of impartiality on the part of the judicial officers who heard the case could characterize violations of the rights to judicial guarantees and judicial protection, which are protected in Articles 8(1) and 25 as they relate to Article 1(1) of the American Convention.

V. CONCLUSIONS

41. The Commission concludes that it is competent to examine the complaints submitted by the petitioner regarding the alleged violation of Articles 8(1) and 25 as they relate to Article 1(1) of the American Convention and are admissible in accordance with the requirements established in Articles 46 and 47 of the American Convention.

42. Based on the factual and legal arguments presented above and without thereby prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the complaints admissible with respect to Articles 8(1) and 25 as they relate to Article 1(1) of the American Convention.
2. To report this decision to the Ecuadorian State and the petitioner.
3. To continue with analysis of the merits of the case.
4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on November 1st, 2010. (Signed): Felipe González, President; Dinah Shelton, Second Vice-President; María Silvia Guillén, José de Jesús Orozco Henríquez, and Rodrigo Escobar Gil, members of the Commission.