

REPORT No. 158/10
PETITION 167-99
INADMISSIBILITY
MEMBERS OF THE UNION OF WORKERS OF
UNIÓN PRODUCTORES DE LECHE S.A.
PERU
November 1, 2010

I. Summary

1. On April 8, 1999, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition presented by the Union of Workers of *Unión Productores de Leche S.A.* and the *Centro de Asesoría Laboral del Perú* (CEDAL)¹ (hereinafter “the petitioners”) in favor of 235 former workers in the company *Unión Productores de Leche S.A.* (hereinafter “the alleged victims”),² in which it is alleged that the Republic of Peru (hereinafter “Peru,” “the Peruvian state” or “the State”) violated the right protected in Article 25 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”). The petitioners asserted that between 1988 and 1991, various labor courts in the city of Lima ordered *Unión Productores de Leche S.A.* to restore the alleged victims to their positions and to pay indemnities. They indicated that due to the failure of the company to reincorporate them, new judicial resolutions were issued for the settlement of social benefits due to arbitrary dismissal. They added that through delay tactics during the execution of the judgment, the creation of new companies and the fraudulent transfer of assets to other companies and individuals, *Unión Productores de Leche* avoided complying with the obligations set forth in final judgments, without the courts having adopted the necessary measures to guarantee their efficacy.

2. The State maintained that the lack of total compliance with the judgments in favor of the alleged victims was due to the insolvency of *Unión Productores de Leche S.A.* and not to an irregular action by the domestic organs. In this sense, it asserted that the facts stated by the petitioners do not characterize a violation of provisions of the American Convention and requested the IACHR to declare the complaint inadmissible in accordance with Article 47(b) and c) of that instrument. It stated that the petitioners did not provide information about judicial remedies that were pursued by all the workers and requested that the petition be declared inadmissible in accordance with Article 46(1)(a) of the Convention.

3. After analyzing the position of the parties, the Commission concluded that it is competent to consider the complaint, but that it is inadmissible by virtue of Articles 46(1)(a) and 47(b) of the American Convention. The Commission decided to notify the parties of the present Inadmissibility Report, make it public, and include it in its Annual Report.

¹ The *Centro de Asesoría Laboral del Perú* was added as a co-petitioner on May 3, 2000.

² The original petition referred to 235 persons; the petitioners submitted copies of judicial resolutions issued between 1988 and 1991 in labor actions filed by 33 former employees of *Unión Productores de Leche S.A.*: Elías Arellán Obregón, José Oswaldo Sánchez Ballón, Carlos Milla Egúsqüiza, José Sangay Ascencio, Francisco Melgravejo Vásquez, Jesús Quispe Sayan, Gregorio Orihuela Vega, Paulino Quispe Carbajal, Melchior Félix Pantoja Mejía, Claudio Chambilla Cáceres, Juan Camacho Salazar, Emiliano Casillas Cáceres, Basilio Huiza Cabrera, Fengencio Bolaños Suárez, Modesto Callalli Etasta, Guillermo Casillas Cáceres, Quintín Sánchez Villafuerte, Juan Alcides Paisig Vargas, Marcelino Huamán Medina, Nemesio Quispe Canchohuamán, Francisco Gómez Quincaño, Félix Huaranga Condezo, Antonio Perfecto Lobatón Antonio, Froilán Venturo Velásquez, Mauro Carbajal Ascarza, Augusto Urruchi Hidalgo, Florencio Sullón Flores, Antonio Torbisco Castañeda, Simeón Huamán Huaihuanahui, Pablo Suclupe Reyes, Pedro Pablo Lázaro Mandujano, Hipólito Rodríguez Cumpitaz and Aurelio Moreno Vívar.

II. PROCESSING BY THE COMMISSION

4. On April 8, 1999, the IACHR received the petition and assigned it the number 167-99. The petitioners sent additional communications on May 3, 2000; February 26, 2001; September 10, 2003; and January 5 and 17, 2004. On August 11, 2006, the pertinent parts of the documentation were transmitted to the State, granting it a period of two months to present its response, in compliance with the Rules of Procedure of the IACHR.

5. On December 21, 2006, the State presented its response and on January 16, 2007, it submitted the respective annexes. After that date, the petitioners submitted additional information on December 19, 2008 and February 2 and June 24, 2009. On April 21, 2010, the petitioners submitted a letter to the IACHR headed to the President of the Inter-American Court of Human Rights, requesting that their petition be declared admissible. The Peruvian state presented written submissions on April 30, June 12, and July 21, 2009.

6. On December 3, 2009, the IACHR requested that the petitioners send updated information within a period of one month. As of the date this report was approved, the petitioners have not provided the requested information.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

7. They asserted that on October 26, 1988, 235 workers of the company *Unión Productores de Leche S.A.* were fired, without observing the requirements contained in Peruvian labor laws. They alleged that these workers presented legal actions calling for their reinstatement and the payment of benefits from the date of the dismissal. They indicated that all the actions were declared well-founded by labor courts in Lima between 1988 and 1991, but that *Unión Productores de Leche S.A.* (hereinafter also the "defendant company") refused to reinstate the alleged victims. According to the allegations, at the beginning of 1990, *Empresa Multi Industriales S.A.* was created, supposedly with the same assets, machinery, logo, and activity as the defendant company.

8. The petitioners stated that due to the impossibility of regaining their previous positions, the alleged victims requested the payment of social benefits due to arbitrary dismissal and for *Multi Industriales S.A.* to be held jointly liable for this compensation. They asserted that between August 1995 and December 1996, this request was granted by the various labor courts in Lima that were in charge of executing the judgments handed down between 1988 and 1991.

9. The petitioners described transfers of property by the defendant company to third parties, which they claimed constituted a fraud against creditors. They indicated that during the process of the execution of the labor judgments, *Unión Productores de Leche S.A.* filed various remedies for contestation, observation, appeal, and nullification, with the aim of delaying or impeding the payment of its debts.

10. The petitioners stated that subsequent to the resolutions adopted between August 1995 and December 1996, the owners of the *Empresa Multi Industriales S.A.* created other companies like *Mapache Internacional* and *Explotadora Industrial S.A.*, and that the alleged victims requested these to be declared jointly liable with *Unión Productores de Leche S.A.* They indicated that the domestic labor courts rejected these requests on the grounds that the legal personality and obligations of the latter company are not shared by *Mapache Internacional* and *Explotadora Industrial S.A.*. According to the petitioners, these grounds do not take into account norms of domestic law establishing the persecutory and preferential character of social benefits in relation to other types of liabilities.

11. The petitioners attached a copy of the judgments handed down by labor courts and tribunals in Lima with relation to 33 alleged victims, without specifying the rulings eventually issued throughout the respective processes of execution. They indicated that "partial compliance has only been

made in the cases of 6 alleged victims, while the remaining ones continue to try to bring about the execution of the judgments in their favor.” Finally, they argued that the Peruvian State “has not provided effective remedies that would make it possible to achieve compliance with [the] judgments that supported the labor rights of the alleged victims,” which, they concluded, was a violation of the right enshrined in Article 25 of the Convention.

B. Position of the State

12. The State described resolutions issued by labor courts in the city of Lima in proceedings for the execution of judgments with respect to 16 former employees of *Unión Productores de Leche S.A.* and argued that in January 1996, these courts issued records of indemnity to Nemesio Quispe Canchohuamán, Carlos Milla Egúsqüiza, Basilio Huiza Cabrera, Emiliano Casillas Cáceres, Antonio Perfecto Lobatón and Juan Camacho Salazar. It added that the same courts ordered *Unión Productores de Leche*, under enforcement of seizure of goods, to pay the social benefits in favor of these alleged victims and Francisco Gómez Quincaño, Augusto Urruchi Hidalgo, Guillermo Casillas Cáceres, Fengencio Bolaños Suárez, Claudio Chambilla Cáceres, Juan Alcides Paisig Vargas, Quintín Sánchez Villafuerte, Félix Huaranga Condezo, Modesto Callalli Etasta and Marcelino Huamán Medina.

13. The State submitted a copy of judicial resolutions ordering the reinstatement and indemnification of 6 presumed victims, records of registration of embargo, forced sale of assets, and preparation of expert reports on liquidation with respect to 16 alleged victims. According to the attached copies of resolutions, these judicial actions were adopted between 1990 and 2006. Based on this information, the State asserted that the labor courts

have issued various resolutions aimed at ordering the Company to reinstate the former workers and, due to lack of compliance with this, they proceeded to order the payment of social benefits, special indemnity for dismissal and earnings [...], embargo and forced sale of the real property of the Company, as well as the seizure of company assets found in other companies, such as *Empresa Explotadora Industrial*, with the aim of making effective the payments owed to the petitioners.

14. The State asserted that the measures provided in domestic legislation for the execution of judgments, such as embargoes and forced sale of assets, are effective judicial remedies. It indicated that the delay in the execution of the judgments was not due to irregular actions by domestic courts, but rather to the lack of sufficient assets of the defendant company.

15. For the foregoing reasons, the State requested the Commission to declare the petition inadmissible in accordance with Article 47(c) of the Convention. Finally, it asserted that the petitioners have attached judgments about labor complaints in relation to a small number of former workers of *Unión Productores de Leche S.A.* and argued that the petition be declared inadmissible with respect to the other alleged victims due to failure to comply with the requirements set forth in Article 46(1)(a) of the Convention.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

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

16. The petitioners are empowered by Article 44 of the American Convention to submit petitions to the Commission. The petition indicates individuals as the alleged victims, with respect to whom the Peruvian State committed to respect and guarantee rights enshrined in the Convention. Peru ratified the American Convention on July 28, 1978. As a result, the Commission is competent *ratione personae* to examine the petition.

17. The Commission has competence *ratione loci* because the petition contains allegations violations of rights protected in the American Convention that took place within the territory of a State Party to that treaty.

18. The Commission has competence *ratione temporis* since the obligation to respect and guarantee the rights protected by the American Convention was already in force for the State on the date the events alleged in the petition occurred.

19. Finally, the Commission has competence *ratione materiae*, given that the petition denounces possible violations of rights protected by the American Convention.

B. Exhaustion of domestic remedies and characterization of the facts

20. Article 46(1)(a) of the American Convention provides that in order for a complaint presented to the Inter-American Commission to be admissible in accordance with Article 44 of the Convention, the remedies offered by domestic jurisdiction must have been exhausted in accordance with generally recognized principles of international law. Article 47(b) of the same instrument establishes that the Commission must declare inadmissible any petition that does not set forth facts that tend to characterize a violation of the rights guaranteed in the Convention.

21. In the present case, the petitioners alleged a failure to enforce judgments issued between 1988 and 1991 in labor proceedings that ordered the liquidation of social benefits by the company *Unión Productores de Leche S.A.* in favor of 235 workers whose dismissals were deemed arbitrary. They argued that in light of Articles 25 and 1(1) of the Convention, the Peruvian state had the obligation to enforce compliance with these judgments. Out of the group of 235 alleged victims, the petitioners presented specific information about the results of labor complaints filed by 33, but they did not provide information about the judicial resolutions adopted throughout the process of execution of the judgments and whether or not the alleged victims were impeded from legally challenging the lack of assets by company *Unión Productores de Leche S.A.* On December 3, 2009, the IACHR requested information from the petitioners on the following points, but has not received a response to date:

1. If during the process of execution of the labor judgments legal mechanisms or judicial remedies existed with the aim of redressing the unavailability of assets from the defendant company or other forms of resolving the debts;

2. If there were, please indicate whether the alleged victims invoked these mechanisms and detail the results obtained [...].

22. The State asserted that the petition does not satisfy the requirement provided under Article 46(1)(a) of the Convention and that the alleged lack of compliance with the labor judgments described by the applicants is not attributable to the Peruvian judicial authorities, but rather to the defendant company's situation of insolvency. Additionally, it asserted that the measures provided for in the domestic legislation with respect to execution against a private entity, such as embargoes and force

sale of assets, are suitable and effective remedies, but in the present case they were not sufficient to satisfy all of the defendant company's debts because there were insufficient assets.

23. In cases of alleged failure to comply with judicial resolutions by public legal entities, the IACHR has maintained that, in order to fulfill the requirement of exhaustion of domestic remedies, the alleged victims must at least inform the competent judicial body of the persistence of the situation, so that it may act in accordance with the law and adopt the measures necessary to enforce the judgment. This action by the alleged victims has the objective of giving the State the opportunity to repair the alleged violation of the right to judicial protection before it is heard by an international organism.³

24. In light of the circumstances of the instant case, the IACHR considers that before coming to this international instance, the alleged victims should have invoked the measures provided under domestic law within the process of execution against the private company *Unión Productores de Leche S.A.* This action is even more relevant in view of the supposed situation of insolvency in the defendant company, as it is not the role of the IACHR to replace the Peruvian authorities in the determination of the effects of this situation, order of preference, or other measures of execution that must be resolved in the procedures established under domestic law.

25. Although the petitioners alleged that the Peruvian labor courts allowed the defendant company to carry out fraudulent maneuvers with the aim of impeding execution of the judgments issued in favor of the presumed victims, they have not shown nor does the file demonstrate that these actions were raised within the framework of the process of execution or through other judicial remedies. In the same sense, the petitioners have not explained whether the measures indicated by the Peruvian state as suitable, such as embargo and forced sale of assets, were available to the alleged victims and whether, when exercising them, judicial authorities had acted irregularly.

26. In view of the preceding considerations, the IACHR does not have sufficient information to evaluate whether the alleged failure to implement the judgments issued by the labor tribunals in favor of the alleged victims between 1988 and 1991 could be attributable to the Peruvian state.

V. CONCLUSIONS

27. Based on the foregoing arguments of fact and law, the Commission considers that the petition does not satisfy the requirements under Articles 46(1)(a) and 47(b) of the American Convention and therefore,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present petition inadmissible for failure to comply with the requirements set forth in Articles 46(1)(a) and 47(b) of the American Convention.
2. To inform 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.

Aproved on the 1st day of the month of November, 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.

³ IACHR, Report No. 13/10, Petition 480-00, Peru, Fidel Gutiérrez Gayoso, March 16, 2010, para. 35 and Report No. 43/09, Petition 1166-05, Peru, Jorge Rafael Valdivia, March 27, 2009, para.38.