

REPORT No. 16/11
PETITION 12.074
INADMISIBILIDAD
MEMBERS OF THE FEDERATION OF PERUVIAN LIGHT AND POWER WORKERS
PERU
March 23, 2011

I. SUMMARY

1. On December 7, 1998 the Inter-American Commission on Human Rights (hereinafter "Commission," "IACHR," or "Inter-American Commission") received a petition submitted by the Federation of Peruvian Light and Power Workers – *Federación de Trabajadores de Luz y Fuerza* (hereinafter also "petitioner"), representing all the workers affiliated with that union (hereinafter "the alleged victims") and alleging responsibility on the part of the Republic of Peru (hereinafter "Peru," "the Peruvian State," or "the State") for violation of rights protected in the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"). The petitioner asserted that in August 1990 the Executive Branch issued a supreme decree nullifying the effects of a collective agreement between workers' union organizations and the state-owned company ELECTROPERÚ S.A. that established automatic salary adjustments. The petitioner indicated that said supreme decree is contrary to constitutional provisions in effect at the time. It added that after it challenged the effects of that decree in an action seeking constitutional protection dated August 27, 1990, the Constitutional Court declared that the case had been abandoned by the complainant, in a decision dated December 19, 1997 and notified on April 13, 1998.

2. The State maintained that the supreme decree that suspended the collective agreements between the workers' unions and ELECTROPERÚ S.A. was a temporary and exceptional decree intended to achieve economic stabilization and control inflation. It emphasized that on December 19, 1997 the Constitutional Court declared the case to have been abandoned by the complainant in the appeal, the Federation of Peruvian Light and Power Workers, and that the Federation was informed of the court's decision on April 13, 1998. Finally, the State asked the IACHR to declare the petition inadmissible based on the requirement established in Article 46(1)(b) of the American Convention.

3. After analyzing the parties' positions, the Commission concluded it is competent to hear the complaint but that it is inadmissible because it fails to satisfy the requirement provided in Article 46(1)(a) of the American Convention. The Commission decided to inform the parties, publish its decision, and include it in its Annual Report.

II. PROCESSING BY THE COMMISSION

4. On December 7, 1998 the IACHR received the petition and assigned it number 12.074. On December 24, 1998 the relevant excerpts of the petition were forwarded to the State, which was given a period of 90 days to submit its response in accordance with the IACHR Rules of Procedure then in effect. The State submitted its response on March 26, 1999 and sent additional information on February 24 and March 5, 2010. The petitioner in turn sent additional briefs on October 21, 1999 and April 27, 2001.

5. On June 25 and 27, July 2 and 11, 2007, and June 16, 2010, some individuals affiliated with the Federation of Peruvian Light and Power Workers submitted communications in their own names, asking the IACHR to adopt a decision on the admissibility of the petition.

III. POSITION OF THE PARTIES

A. The petitioner

6. According to the allegations, on September 1, 1978 the Federation of Peruvian Light and Power Workers and affiliated unions signed a collective agreement with Electricidad del Perú – ELECTROPERÚ S.A. and other regional electricity companies, establishing quarterly adjustment of employee compensation in proportion to increases in the consumer prices indices published by the National Statistics Institute. The petitioner indicated that on August 20, 1990 the Executive Branch issued Supreme Decree No. 057-90-TR, Article 1 of which states that:

Until December 31, 1990 the companies included in Law 24948 of 12-02-88, the State Business Activity Law, whose workers are subject to the private activity regime, may not grant increases in compensation that have been established by unilateral decision of the employer or pursuant to a collective agreement, regardless of denomination, system, method, or frequency adopted. The State may regulate any increases that may be necessary during this period.¹

7. The petitioner asserted that according to the Political Constitution of 1979, in effect at that time, collective labor agreements had the force of law between the contracting parties, and thus Supreme Decree No. 057-90-TR of August 20, 1990 is invalid. It asserted that although Supreme Decree No. 057-90-TR established an initial effective period up to December 31, 1990, its effects were extended to June 30, 1991 through subsequent decrees.

8. According to the allegations, on August 27, 1990 the Federation of Peruvian Light and Power Workers filed an action seeking constitutional protection (*amparo* suit) on behalf of all affiliated workers and to establish the inapplicability of Supreme Decree No. 057-90-TR. The petitioner indicated that the action was declared well-founded by the Eighth Specialized Civil Court and the Third Civil Chamber of the Superior Court of Justice of Lima on October 31, 1990 and November 29, 1991, respectively. However, on March 8, 1993 the Chamber of Constitutional and Social Law of the Supreme Court of Justice overturned the lower court decisions and ruled that the *amparo* suit was inadmissible. The petitioner alleged that in response to that Supreme Court decision, the Federation of Peruvian Light and Power Workers filed a cassation appeal with the Court of Constitutional Guarantees on May 14, 1993.

9. The petitioner indicated that the Court of Constitutional Guarantees ceased to exist after approval of the Political Constitution of 1993 and the Constitutional Court was set up as the highest court for *amparo* suits. The petitioner indicated that on December 19, 1997 the cassation appeal initially filed on May 14, 1993 was declared abandoned and the petitioner was informed of that decision on April 13, 1998. It affirmed that the decision on abandonment was based on Law 26853 of August 29, 1997, which established that appeals heard by the Constitutional Court, replacing the Court of Constitutional Guarantees, would be declared abandoned in the event the appellant failed to confirm their procedural complaint in writing within a period of 60 days after the referenced law took effect. According to the petitioner, "it is questionable that there is no ruling from the Constitutional Court informing us of the 60-day period to express our decision to continue the proceeding, and thus [...] there is a violation of due process."

10. The petitioner indicated that on July 10, 1998 it was notified from the First Specialized Transitory Corporate Court on Public Law regarding the final archiving of the case in the *amparo* proceeding. It argued that that date must be considered the final procedural activity for purposes of the prerequisites of Articles 46(1)(a) and (b) of the American Convention. In addition, it asked that the Commission apply "to the case one of the exceptions contained in the [...] American Convention on Human Rights – Article 46(2)(c) – indicating that the period for admissibility of the complaint shall not

¹ Petition received on December 7, 1998, annexes, copy from the Official Journal *El Peruano*, page 88889, Supreme Decree No. 057-90-TR, Article 1.

apply when there has been unwarranted delay in rendering a decision on remedies that exhaust the domestic jurisdiction.”

11. The petitioner maintained that when the Supreme Court of Justice and the Constitutional Court issued their decisions they were subordinate to the interests of the government of then President Alberto Fujimori and that their members did not fulfill the guarantees of impartiality and independence. In addition, it indicated that when the decision of December 19, 1997 was issued, the Constitutional Court had only four judges, in that the Congress of the Republic had unlawfully removed three other judges.

12. The petitioner indicated that parallel to the petition before the IACHR, it formulated a complaint against the Peruvian State with the Committee on Freedom of Association of the International Labor Organization. Finally, it alleged that the Peruvian State is responsible for violating the rights enshrined in Articles 16 and 26 of the American Convention and Article 8 of the Additional Protocol in the Area of Economic, Social, and Cultural Rights (hereinafter “the Protocol of San Salvador”).

B. The State

13. The State asserted that on August 20, 1990 the Executive Branch issued Supreme Decree No. 057-90-TR, establishing the inapplicability, until December 31, 1990, of automatic pay adjustments in state companies included in Law No. 24948 – the State Business Activity Law. This included ELECTROPERÚ S.A. and other regional companies whose employees were affiliated with the Federation of Peruvian Light and Power Workers. The State indicated that the decree was part of a series of measures issued for exceptional and temporary reasons of social interest in the context of a program to stabilize the economy and control inflation. It indicated that once the effective period of Supreme Decree No. 057-90-TR expired, workers in the electrical sector signed new collective agreements improving their workplace and salary conditions.

14. The State’s account was similar to that of the petitioner with respect to the decisions on the *amparo* suit filed on August 27, 1990 with the Eighth Specialized Civil Court of Lima. It asserted that with approval of the Political Constitution of 1993, the Constitutional Court was created and that the fifth transitory provision of its Organic Law (Law No. 26435) made it competent to hear cassation appeals pending decision before what was then the Court of Constitutional Guarantees. It added that in order to expedite that transitory provision, Law No. 26853 was promulgated on August 29, 1997. Its sole article establishes that:

The Constitutional Court shall declare abandonment of the case in habeas corpus and amparo proceedings heard by the court, in accordance with the Fifth Transitory Provision of Law No. 26435, when the interested parties fail to express in writing, within a period of 60 business days following the publication of this law, the desire that the Court rule on their case. Once abandonment of the case has been declared, the decision being challenged acquires res judicata status.²

15. The State indicated that given the Federation of Peruvian Light and Power Workers’ failure to comply with the provisions of Law No. 26853, the Constitutional Court declared the definitive abandonment of the case on December 19, 1997, and thus the final decision of the Chamber of Constitutional and Social Law of the Supreme Court of Justice of March 8, 1993 acquired the status of *res judicata*. It added that the complainant was informed of the decision of the Constitutional Court on April 13, 1998, whereas the petition was submitted to the IACHR on December 7, 1998. In this respect, it maintained that the petition does not meet the timeliness requirement for submission established in Article 46.1.b) of the American Convention.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

² Response from the State received on March 26, 1999, page 4. The underlining and italics correspond to the literal transcription of the State’s brief.

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

16. The petitioner is authorized by Article 44 of the American Convention to submit petitions to the Commission. For its part, Peru ratified the American Convention on July 28, 1978. The petition indicates as alleged victims natural persons who are workers affiliated with the Federation of Peruvian Light and Power Workers and were represented by that union in the *amparo* suit filled on August 27, 1990. As a result, the Commission is competent *ratione personae* to examine the complaint.

17. The Commission is competent *ratione materiae* and *ratione loci*, in that the petition alleges violations of rights protected in the American Convention and in Article 8.1.a) of the Protocol of San Salvador that took place within the territory of a State party to that treaty.

18. Finally, the Commission is competent *ratione temporis* as the obligation to respect and guarantee the rights protected by the American Convention were already in effect for the State on the date when the events alleged in the petition took place.

B. Exhaustion of domestic remedies

19. Article 46.1.a) of the American Convention provides that in order for a complaint submitted to the Inter-American Commission to be admissible in accordance with Article 44 of the Convention, 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 national authorities to learn of the alleged violation of a protected right and, if appropriate, allow them the opportunity to remedy the violation before it is heard by an international body.

20. This petition alleges that the American Convention was violated as a result of Supreme Decree No. 057-90-TR and the action of Peruvian courts regarding the *amparo* suit filed on August 27, 1990 by the Federation of Peruvian Light and Power Workers. As the parties allege, that action was declared well-founded in decisions handed down on October 31, 1990 and November 29, 1991 by the Eight Specialized Civil Court and the Third Civil Chamber of the Superior Court of Justice of Lima, respectively. However, on March 8, 1993 the Chamber of Constitutional and Social Law of the Supreme Court of Justice overturned those decisions and ruled that the *amparo* suit was inadmissible, in response to which the complainant filed a cassation appeal with the Court of Constitutional Guarantees.

21. According to the information in the file, on December 19, 1997 the Constitutional Court declared the cassation appeal abandoned and ordered that the file be returned to the lower courts to proceed with the final archiving of the case. That decision was based on Law No. 26853, which established that *amparo* suits originally filed with the Court of Constitutional Guarantees, which were transferred to the Constitutional Court for hearing, had to be confirmed in writing within a period of 60 business days after August 29, 1997.³

22. Although the petitioner noted that the decision of December 19, 1997 violates due process guarantees, it has not alleged any impediment to file a written submission to the Constitutional Court in accordance with Law No. 26853. In addition, neither the petitioner nor the case file provide any indication that a violation of judicial guarantees based on the requirement established in Law No. 26853 had been raised in the context of the *amparo* suit itself or any other remedy. Moreover, the IACHR emphasizes that the allegations regarding actions taken by courts that would not satisfy the guarantees of independence and impartiality are generic in nature and have not been sufficiently linked to the specific case for the purpose of understanding the potential impact on the *amparo* suit filed by the Federation of Peruvian Light and Power Workers.

³ Law 26853 of August 29, 1997, available on the website of the Congress of the Republic of Peru: www.congreso.gob.pe/ntley/Imagenes/Leyes/26853.pdf.

23. Inasmuch as the *amparo* suit filed on August 27, 1990 was rejected due to the failure to comply with procedural requirements provided in Peruvian legislation, and given the absence of concrete claims regarding the incompatibility of that legislation with the American Convention, the IACHR concludes that the alleged victims did not exhaust the domestic remedies property. In this respect, the IACHR considers that the petition does not satisfy the requirement set forth in Article 46(1)(a) of the Convention.

24. The Commission refrains from examining the other admissibility requirements provided in the Convention, as they are extraneous here.⁴

V. CONCLUSIONS

25. Based on the foregoing factual and legal arguments, the Commission considers the petition inadmissible in accordance with Article 46(1)(a) of the American Convention, and accordingly,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this petition inadmissible because it fails to meet the requirement established in Article 46(1)(a) of the American Convention.

2. To inform the State and the petitioner of this decision.

3. To publish this decision and include it in the Annual Report to be submitted to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 23rd day of March 2011. (Signed): Dinah Shelton, President; José de Jesús Orozco Henríquez, First Vice-President; Rodrigo Escobar Gil, Second Vice-President; Paulo Sérgio Pinheiro, Felipe González, Luz Patricia Mejía Guerrero, and María Silvia Guillén, Commission Members.

⁴ IACHR, Report No. 14/10, Petition 3576-02, Inadmissibility, Workers Dismissed from Lanificio del Perú S.A., Peru, March 16, 2010, para. 35; Report No. 135/09, Petition 291-05, Inadmissibility, Jaime Salinas Sedó, November 12, 2009, Peru, para. 37 and Report No. 42/09, Petition 443-03, Inadmissibility, David José Ríos Martínez, Peru, March 27, 2009, para. 38.