

REPORT No. 18/11
PETITION 871-03
INADMISSIBILITY
VÍCTOR ELADIO LARA BOLÍVAR
PERU
March 23, 2011

I. SUMMARY

1. On October 20, 2003, the Inter-American Commission on Human Rights (hereinafter "the Commission," "the IACHR" or the "Inter-American Commission") received a petition filed by Víctor Eladio Lara Bolívar (hereinafter also "the alleged victim" or "the petitioner") on his own behalf alleging the violation by the Republic of Peru (hereinafter "Peru," "the State" or "the Peruvian State") of rights enshrined in the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"). The petition maintains that the alleged victim was dismissed from *Banco de la Nación*, where he said he had been working for more than 25 years. It stated that the dismissal was carried out through an emergency decree regulating a labor restructuring process at the aforementioned bank. The process consisted of group dismissals and early retirements of employees. According to the petitioner, his dismissal took place several months after the period during which the decree was in force. He indicated that on demanding his reinstatement through a labor complaint, Peruvian courts rejected his claim, using standards contrary to domestic legislation and precedent set by higher courts in similar matters.

2. The State maintains that Mr. Víctor Eladio Lara Bolívar's dismissal took place in keeping with pertinent domestic law. It stated that according to the case law of the Peruvian Constitutional Tribunal, accepting indemnity and collecting a pension mean the worker has given his tacit consent to retirement. The State argued that the facts set forth in the petition do not form a violation of the provisions of the American Convention and requested that the IACHR declare the petition inadmissible by virtue of Article 47(b) of the Convention.

3. After examining the positions of the parties, the Commission concluded that it has jurisdiction to hear the complaint, but that the complaint is not admissible because it fails to meet the requirement set forth in Article 46(1)(b) of the American Convention. The Commission ruled to notify the parties of this Report on Inadmissibility, to make it public, and to include it in its Annual Report.

II. PROCEEDING BEFORE THE COMMISSION

4. On October 20, 2003, the IACHR received the petition and assigned it number 871-03. The petitioner submitted additional information on August 24, September 5, October 11 and November 24, 2006; June 12, 2007; May 19, 2008; and April 23, 2009. On July 7, 2009, the pertinent parts of this documentation were sent to the State, which was given two months to submit its reply, in keeping with the Rules of Procedure of the IACHR.

5. On September 14, 2009, the State submitted its response and on September 22, 2009, and July 26 and 27, September 9, and November 12, 2010, it submitted additional briefs. For his part, the petitioner sent additional information on August 28, 2009, and on March 30, June 2, September 20, and October 27, 2010.

III. POSITION OF THE PARTIES

A. Position of the petitioner

6. The petitioner stated that on April 19, 1994, Emergency Decree number 09-94 was published in Official Newspaper *El Peruano*. The decree provided for the administrative restructuring of *Banco de la Nación*. He indicated that the first article of the decree stated that the restructuring must be carried out within six months of the decree's entry into force, which is to say between April 20 and October 20, 1994. He stated that on January 6, 1995, three months after the decree's time in force had expired, he received a letter of dismissal from *Banco de la Nación*, where he had worked as technician for more than 25 years.

7. The petitioner stated that after being relieved of his position, he started to receive deposits in the amount of a pension provided for under the terms of the public sector regimen, governed by Legal Decree No. 20530. He received those deposits in the account where he previously received his monthly salary. He indicated that the deposits did not meet the requirements of form called for by law and that he at no time accepted his status as retired.

8. Mr. Lara Bolívar stated that at the moment he was notified of his retirement he was carrying out his duties as a union leader and negotiating a collective bargaining agreement on behalf of the employees of *Banco de la Nación*. In this regard, he stated that he was protected by union immunity and that any action to change his labor status would violate domestic labor law.

9. According to the complaint, on February 2, 1995, Mr. Lara Bolívar filed a labor complaint demanding he be reinstated in his job. It is indicated that on April 25, 1997, the Second Labor Court of Lima ruled in his favor, but the First Labor Chamber of Lima struck down the ruling and ordered the case file returned to the lower court. According to the petition, on April 24, 1997, the Second Labor Court of Lima ruled again on the merits of the complaint, this time ruling against it and concluding that his retirement and collection of pension payments are grounds for terminating the work contract. The petitioner indicated that on December 4, 1997, the First Labor Chamber of Lima upheld the ruling of the lower court, and on October 22, 1998, the Supreme Constitutional and Social Chamber of the Supreme Court of Justice denied a writ of cassation requested by the alleged victim.

10. The petitioner stated that once the regular labor proceeding had concluded, he requested various extraordinary remedies claiming that his dismissal had been illegal. He indicated that on February 5, 1999, he sought a "Writ of Extraordinary Review" before the Constitutional and Social Chamber of the Supreme Court of Justice, which was denied on July 12 of that year. He indicated that on January 7, 2000, he sought a Writ of Fraudulent *Res Judicata* before labor courts and was denied on January 17, 2000. He stated that on March 30, 2000, he sought a writ of *amparo*, a request which was declared inadmissible by a lower court on December 12, 2000. That ruling was later upheld by a higher court on July 25, 2001. Finally, he stated that he sought an Extraordinary Writ of Review before the Constitutional Tribunal on the judgments denying the *amparo*, but that the request was ruled inadmissible on October 4, 2003.

11. The petitioner argued that of the 72 Banco de la Nación workers dismissed from their jobs under emergency decree 09-94, the majority had been reinstated through labor judgments. He emphasized that several of those workers had also received pension payments under Legal Decree no. 20530 but that they were nevertheless reinstated. In this respect, he stated that the tribunals ruling on his labor complaint were not aware of certain case law precedents set in situations similar to his and concluded that this implied a violation of the right of equality before the law.

12. Finally, the petitioner asserted that the State is responsible fore the violation of the rights enshrined in articles 8, 10, 11, 24 and 25 of the American Convention.

B. Position of the State

13. The State set forth a narrative similar to that of the petitioner with regard to the result of the legal complaints submitted in order to be reinstated in his job. The State argued that Mr. Lara Bolívar has had all regular and special routes available to him as provided for in Peruvian legislation for ensuring that his rights prevail and that his suits were ruled on in the framework of due process. It indicated that the fact of having received unfavorable rulings does not comprise a violation of rights protected under the American Convention, especially when those rulings came from competent, autonomous and independent tribunals.

14. According to the State, the petitioner was denied reinstatement in his job because according to Peruvian labor legislation, collecting a severance pension is one of the grounds for the termination of a labor relationship. The State added that during the regular labor proceedings, the defendant - *Banco de la Nación* - submitted several pension payment receipts signed by Mr. Lara Bolívar, for which reason the call for his dismissal to be declared null has no legal standing. According to the arguments of the State, the signing of the receipts is a tacit recognition of the termination of the labor relationship with *Banco de la Nación*.

15. The State rejected the petitioner's allegations that his dismissal took place in retaliation for his actions as a union leader and added that the dismissal was based on objective grounds established in domestic law.

16. Finally, the State argued that the facts set forth in the petition do not form a violation of the provisions of the American Convention and requested that the IACHR declare the petition inadmissible by virtue of Article 47(b) of the Convention.

IV. ANALYSIS OF JURISDICTION AND ADMISSIBILITY

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

17. The petitioner is empowered by Article 44 of the American Convention to submit petitions before the Commission. The petition indicates that a natural person is the alleged victim, and the Peruvian State has committed itself to respecting and guaranteeing the rights of natural persons enshrined in the Convention. For its part, Peru ratified the American Convention on July 28, 1978. As a consequence, the Commission has *ratione personae* jurisdiction to hear the complaint.

18. The Commission has *ratione materiae* and *ratione loci* jurisdiction in so far as the petition alleges violations of rights protected by the American Convention that would have taken place within the territory of a State party to that treaty.

19. Finally, the Commission has *ratione temporis* jurisdiction, as the obligation to respect and guarantee the rights protected by the American Convention was already in force for the State on the date on which the facts alleged in the petition would have taken places.

B. Other admissibility requirements for the petition

1. Exhaustion of domestic remedies and deadline for submitting the petition

20. Article 46(1)(a) of the American Convention holds that in order for a complaint submitted before the Inter-American Commission under Article 44 of the Convention to be admissible, it is necessary for the complaint to have sought and exhausted all domestic remedies, in keeping with generally accepted principles of international law. The purpose of this requirement is to allow domestic authorities to become aware of the alleged violation of a protected right and, where appropriate, have the opportunity to resolve it before it is brought before an international authority.

21. Article 46(1)(b) of the Convention establishes that for the petition to be declared admissible it must have been lodged within a period of six months from the date on which the party in question was notified of the final judgment exhausting the domestic jurisdiction.

22. This petition alleges that upon being fired from his job at *Banco de la Nación*, the alleged victim requested he be reinstated through a regular labor complaint, which was rejected by the highest court - the Supreme Court of Justice - through a final judgment on October 22, 1998. According to the statement of facts, after being notified of this final judgment of the Supreme Court on January 29, 1999, Mr. Lara Bolívar sought various special remedies in order to challenge the labor courts' rulings under the regular proceedings.

23. According to the information submitted by the parties, on February 5, 1999, the alleged victim requested a "writ of extraordinary review" before the Constitutional and Social Chamber of the Supreme Court of Justice. On July 15, 1999, the Supreme Court notified Mr. Víctor Eladio Lara that the requested remedy had been dismissed. Later, on January 7, 2000, he filed for a writ of nullification of fraudulent *res judicata* to be applied to the rulings issued in the regular reinstatement labor proceeding. On January 17, 2000, the 15th Labor Court of Lima ruled the remedy time-barred, based on the following arguments:

the deadline for filing an appeal for Nullification of *Res Judicata* is six months from execution or from the acquisition of the status of *res judicata*. Yet clause 1.- of the brief of the suit states that the execution took place on October 22, 1998, while this action was filed on January 7, 2000, the deadline having expired (...).¹

24. Mr. Víctor Eladio Lara indicated that on March 17, 2000, he submitted an action of *amparo* against the rulings handed down in the first and second instance in the reinstatement labor proceeding. The submission of that action derived from a ruling handed down on December 12, 2000, by the Specialized Transitory Corporate Chamber of Public Law of the Superior Court of Justice of Lima, which indicated that:

The judicial proceeding came to an end with the issuing of the ruling of the Constitutional Chamber of the Supreme Court of Justice dated October 22, 1998, denying the writ of cassation requested by the plaintiff, who had been notified of that ruling on January 29, 1999, as the plaintiff himself states in paragraph 12 of his complaint; consequently, the current date being the date of this complaint - March 17, 2000 - it is concluded that it has been submitted late (...).²

25. According to the information submitted, the above-cited ruling was upheld by the Constitutional and Social Law Chamber of the Supreme Court of Justice on July 25, 2001. That information indicates that later, the alleged victim requested an "extraordinary writ of review" before the Constitutional Tribunal on the judgments denying the *amparo* action brought on March 17, 2000. On

¹ Initial petition received on October 20, 2003, annexes, Resolution One of January 17, 2000, issued by the 15th Labor Court of Lima, case file No. 0005-2000, considering nine.

² Initial petition received on October 20, 2003, annexes, Resolution 12 of December 12, 2000, issued by the Specialized Transitory Corporate Chamber of Public Law of the Superior Court of Justice of Lima, case file No. 979-2000, considering four.

December 4, 2003, the Constitutional Tribunal - the highest court - denied the *amparo* action and upheld the lower-court rulings, arguing that against the labor court judgments challenged in the *amparo* action,

the party bringing the complaint [had] filed a complaint of nullification of fraudulent *res judicata*, according to pages 46 to 48 in the record of proceedings, leaving the *amparo* complaint without grounds, as in keeping with the provisions of Article 6, subparagraph 3) of Law No. 23506, actions of guarantee are not granted when the injured party has opted for a regular judicial proceeding.³

26. The IACHR observes that the regular labor proceeding concluded on October 22, 1998, with the final judgment of the Supreme Court of Justice, ruling on a writ of cassation filed by the alleged victim. With regards to the special remedies submitted after the labor proceeding, according to the above paragraphs, all the courts, chambers and superior tribunals who heard them ruled that they were submitted past the deadline or did not satisfy other admissibility requirements established by the domestic procedural law.

27. The IACHR deems it important to stress that special remedies can provide a suitable mechanism to satisfy the requisite set forth in Article 46(1)(a) of the American Convention. However, while filing a judicial remedy, either ordinary or special, the alleged victims must comply with the reasonable admissibility requirements established in the domestic legislation. By doing so, they give an opportunity for the state to redress a violation of the American Convention before it is raised before an international body.

28. The Inter-American Court of Human Rights has indicated that effectiveness of a judicial remedy implies, potentially, that once all the formal requirements of admissibility and procedure established by domestic law are met, the judicial body will evaluate its merits. In the same sense, it has expressed that the existence of admissibility requirements and their application prior to hearing the merits of a judicial remedy are not incompatible with the right protected by Article 25 of the Convention.⁴

29. According to the copies of the judicial case file and the description of the parties, the writ of special review requested on February 5, 1999, the writ of fraudulent *res judicata* requested on February 5, 1999, and the *amparo* action brought on March 17, 2000, failed to comply with procedural requirements established in domestic legislation. Without prejudging their effectiveness, according to the Peruvian legislation, for reverting the rulings issued in the regular labor proceeding, the IACHR finds that on failing to comply with the requirements of applicable procedural legislation, the aforementioned special remedies were not proper for remedying the violations of human rights alleged before this international body. Therefore, they cannot be taken into account in calculating the deadline of six months established in Article 46(1)(b) of the American Convention.

30. Based on these considerations, the IACHR finds that domestic remedies were exhausted with the final ruling of the Supreme Court of Justice of October 22, 1998, of which Mr. Víctor Eladio Lara Bolívar was notified on January 29, 1999. Given that the petition was received by the IACHR on October 20, 2003, it does not meet the requirement established in Article 46(1)(b) of the Convention.

31. The Commission abstains from examining the remaining admissibility requirements provided for in the Convention, due to exhaustion of the subject matter.⁵

V. CONCLUSIONS

³ Initial petition received on October 20, 2003, annexes, Resolution of December 4, 2003, issued by the Constitutional Tribunal of Peru, case file No. 1644-202-AA/TC, operative paragraph 3.

⁴ Inter-American Court, *Case of Castañeda Gutman v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 6, 2008. Series C No. 184, para. 94; and *Case of the Dismissed Congressional Employees (Aguado - Alfaro et al.)*. Judgment of November 24, 2006. Series C No. 158, para. 126.

⁵ IACHR, Report no. 14/10, Petition 3576-02, Inadmissibility, Workers Dismissed by Lanificio del Perú S.A., Peru, March 16, 2010, para. 35; Report No. 135/09, Petition 291-05, Inadmissibility, Jaime Salinas Sedó, Peru, November 12, 2009, para. 37 and Report No. 42/09, Petition 443-03, Inadmissibility, David José Ríos Martínez, Peru, March 27, 2009, para. 38.

32. Based on the arguments of fact and law herein set forth, the Commission finds the petition inadmissible for failure to comply with the requirement established in Article 46(1)(b) of the American Convention, and consequently,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this petition inadmissible for failing to meet the requirement set forth in Article 46(1)(b) of the American Convention.
2. To notify the State and the petitioner of this decision.
3. To publish this decision and include in the Annual Report, to be presented before 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.