

REPORT No. 15/11
PETITION 222-03
INADMISSIBILITY
LUIS ALBERTO RUESTA ADRIANZÉN
PERU
March 23, 2011

I. SUMMARY

1. On March 19, 2003, the Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission," "Commission," or "IACHR") received a petition filed in his own name by Mr. Luis Alberto Ruesta Adrianzén (hereinafter the "petitioner" or "alleged victim"), alleging that the Republic of Peru (hereinafter "Peru," the "Peruvian State," or the "State") was responsible for alleged violations of rights protected in the American Convention on Human Rights (hereinafter the "Convention" or "American Convention"). The petitioner alleged that owing to an arbitrary and baseless ministerial decision issued in December 1999, he was forced to retire from his job as an official of the Peruvian Air Force. He asserted that after filing an administrative complaint seeking his reinstatement, the Supreme Court of Justice ruled the complaint inadmissible on grounds that were contradictory to constitutional provisions and the decrees-laws applicable to the military employment regime. He also alleged improper conduct on the part of the Judiciary, which he argued was influenced by political motives and the country's Armed Forces.

2. For its part, the State argued that Mr. Ruesta Adrianzén was able to pursue the administrative and judicial remedies provided under Peruvian law to challenge his retirement. It noted that the contentious-administrative complaint lodged by the alleged victim was ruled inadmissible because he had accepted payment of social benefits and other compensation from the Peruvian Air Force. It went on to note that under the precedent established by the Constitutional Court, the fact that the applicant accepted payment of social benefits indicates that he had consented to the end of labor contract and, therefore, his complaint seeking reinstatement to public service was inadmissible. The State asserted that the facts described in the petition did not constitute a violation of the rights protected in the Convention and requested that the IACHR declare the complaint inadmissible pursuant to Article 47(b) of said instrument.

3. After analyzing the parties' positions, the Commission concluded that it has competence to consider the complaint, but that the case does not meet the requirement set forth in Article 47(b) of the American Convention, for failing to state a colorable claim. The Commission decided to transmit this Report of Inadmissibility to the parties, to publish it, and to include it in its Annual Report.

II. PROCESSING BY THE COMMISSION

4. On March 19, 2003, the Commission received the petition and processed it under number 222-03. The petitioner furnished additional information on August 10, 2004, and April 25, 2005. On August 31, 2005, the relevant parts of that documentation were forwarded to the State with a deadline of two months to present its response, in accordance with the IACHR Rules of Procedure. The State presented its response on December 22, 2005, and submitted additional communications on February 7 and November 7, 2006; August 8, 2007; July 31, 2008; July 7, August 27, and December 22, 2009; and on April 16 and 19, May 25, July 6, September 20, November 19, and December 3, 2010; and on February 15, 2011.

5. The petitioner submitted additional information on September 7 and 20, 2005; March 3, April 12 and 26, May 26 and 31, August 4, September 7, November 1, 18, and 27, 2006; February 15 and 28, March 22, and July 25, 2007; January 31, March 4 and 24, September 15, and November 30, 2008; June 9, July 21, and August 24, 2009; February 16, April 14, May 3, 9, and 29, June 1, 10, 16, and 28, September 29, October 19 and 24, November 10, 19, and 29, and 20 December 20, 2010; and on January 3 and 12, and February 2, 8 and 17, 2011.

6. During the processing of this complaint, the petitioner sent a series of communications to individuals as well as agencies associated with the Armed Forces; the Judiciary; the Executive and Legislative branches; the Office of the Ombudsman [*Defensoría del Pueblo*]; the Truth and Reconciliation Commission of Peru; the Peruvian Association of Engineers; the Archdiocese of Lima; ambassadors, ministers of foreign affairs, and heads of state; the communications media; and NGOs headquartered in Peru and abroad. Inasmuch as these communications were not addressed to the IACHR and their relationship to the petition was not indicated, they were considered as materials of reference.

III. POSITIONS OF THE PARTIES

Preliminary Consideration

7. In his initial petition, Luis Alberto Ruesta Adrianzén, who at that time was a Major in the Peruvian Air Force, alleged that on December 27, 1999, he was forced into retirement by means of Ministry of Defense Decision No. 1551-DE-FAP. The petitioner and alleged victim argued that after having exhausted administrative channels, he filed a contentious-administrative complaint on December 28, 2000 (case file No. 777-ACA) challenging the aforementioned ministerial decision and demanding his reinstatement. In subsequent communications, he mentioned having filed an *amparo* suit against the Peruvian Air Force with the Fifth Civil Court on Constitutional Matters [*Quinto Juzgado Especializado en lo Constitucional*], requesting the issuance of a military identification card for the purpose of receiving social benefits.

8. The petitioner indicated that on February 18, 2008, he filed a second contentious-administrative complaint with the Fourth Circuit Administrative Tribunal [*4º Juzgado Contencioso Administrativo*] seeking recognition of his right to draw a pension as a retired Major of the Air Force. He also acknowledged having filed criminal complaints with the Office of the Attorney General of Lima Province as well as disciplinary complaints with the Judicial Defense System Court of Peru [*Tribunal de Sanciones del Sistema de Defensa Jurídica del Estado*], all of which were against the State's Attorney on Legal Matters of the Ministry of Defense concerning the Peruvian Air Force [*Procurador Público Adjunto a cargo de los Asuntos Judiciales del Ministerio de Defensa relativos a la Fuerza Aérea del Peru.*]

9. While both the petitioner and the State presented information and allegations regarding the two contentious-administrative complaints, the *amparo* suit, and the criminal and disciplinary complaints lodged by Mr. Luis Alberto Ruesta Adrianzén, the latter indicated that petition No. 222-03:

is limited to the **COMPLAINT SEEKING REINSTATEMENT IN THE AIR FORCE** that I filed with the Judiciary of Peru, Case File No. **777-ACA of the Third Labor Court of Lima**, after I was **arbitrarily and unconstitutionally forced into retirement as indicated in the grounds for REINSTATEMENT in Ministerial Decision No. 1551/DE/FAP dated December 27, 1999 (...)**¹.

10. In view of the information furnished by the petitioner, in the summary of the positions of the parties the IACHR will refer exclusively to the allegations concerning the retirement of Mr. Luis Alberto Ruesta Adrianzén and his contentious-administrative complaint filed on December 28, 2000.

A. The petitioner

11. The petitioner stated that on October 21, 2005, the Third Labor Court of Lima ruled partially in favor of the contentious-administrative complaint filed December 28, 2000, declaring Ministerial Decision No. 1551-DE-FAP invalid and ordering his reinstatement. Following appeals filed by the alleged victim and the State's Attorney for the Air Force [*Procurador Público de la Fuerza Aérea*], on March 16, 2006, the Second Constitutional and Social Law Chamber of the Supreme Court of Justice

¹ Communication of the petitioner received April 14, 2010, page 1. The use of capital letters, bolded text, and underlining reflects the original version. In communications received on May 29 and June 1, 2010, the petitioner reiterated that his claim was limited to the complaint seeking his reinstatement in the Air Force via the contentious-administrative action filed on December 28, 2000 and registered under Case File No. 777-ACA.

reversed the above-mentioned decision and ruled that Mr. Ruesta Adrianzén's complaint was inadmissible. According to the petitioner, the Supreme Court of Justice is the court of last resort in Peru and its rulings are not subject to further review.

12. Mr. Ruesta Adrianzén asserted that the ruling of the Supreme Court of Justice of March 16, 2006, concluded that by accepting payment of social benefits he had consented to the extinguishment of the labor contract. He argued that such reasoning is in conflict with provisions of Peru's Constitution and with the special legislation governing the employment regime for officers of the Armed Forces. He added that the Supreme Court of Justice ruled his complaint inadmissible despite the fact that the State's Superior Attorney [*Fiscal Supremo*] had issued an advisory opinion on December 16, 2005, in which he recommended upholding the ruling of the Third Labor Court of Lima in favor of the alleged victim.

13. The petitioner acknowledged having accepted advance payment of social benefits and compensation from the Armed Forces because "[he] was in a desperate economic situation (...) due to the inopportune termination of [his] employment, disrupting the flow of income [he] used to cover the most basic subsistence needs of he and [his] family..." The petitioner alleged that the State's Attorney responsible for defending the Peruvian Air Force submitted various documents over the course of the contentious-administrative proceeding which were included in case file after the deadlines established by the pertinent legislation. He argued that he was not allowed to respond timely to the documents submitted by the State's Attorney for the Air Force, especially evidence submitted as proof of payment of social and economic benefits owing to termination of the labor contract, which consequently violated his right to a fair trial.

14. The petitioner mentioned a number of different laws and decree-laws related to the employment regime of members of the Armed Forces, arguing that, according to said regulations, the status of members of the military in Peru include the categories of active duty, availability, retirement, or reservist, "[having] the right to move from one status to another without extinguishing the labor contract." The petitioner added that "receiving payment of benefits for which personnel are eligible upon moving from one type of military status to another neither constitutes *de facto* exclusion nor of rights stipulated in the labor relationship with the institution, especially when the affected person has a family to support (...)"

15. The petitioner indicated that in different rulings, the Constitutional Court has decided that decisions ordering the retirement of officers of the Armed Forces for the purpose of replenishing the ranks must be duly founded, which he argues was not the case in Ministerial Decision No. 1551-DE-FAP of December 27, 1999. The petitioner indicated that, in general terms, the Peruvian justice system has allowed itself to be influenced by "pressure and the manipulation of political power (...) [resulting in] numerous acts of corruption and interference of that power." Finally, the petitioner argued that the State was responsible for violating the rights guaranteed in Articles 4, 5, 11, 17, 21, 24, 8 and 25 of the American Convention.

B. The State

16. The State provided an account similar to that of the petitioner with respect to the decisions of the domestic courts regarding the contentious-administrative complaint lodged December 28, 2000, by Mr. Ruesta Adrianzén. It argued that the March 16, 2006 ruling of the Supreme Court of Justice was based on precedent established by the Constitutional Court. It pointed out that the alleged victim "accepted his social benefits and all economic rights to which he was entitled in a timely manner: in other words, he expressly consented to the ministerial decision ordering his retirement from the military for the purpose of replenishing the ranks."

17. The State acknowledged that prior to lodging his complaint with the legal system, Mr. Ruesta Adrianzén freely exercised the administrative remedies provided under the Administrative Procedure Act (Law No. 27444). In this regard, it enclosed copies of the decisions issued in said proceeding, arguing that it was carried out in accordance with due process guarantees. The State also enclosed copies of decisions issued by the Personnel Command of the Peruvian Air Force, in which it

conceded payment to the alleged victim of compensation benefits, retirement insurance, and other social benefits.

18. According to the information provided by the State, Decree-Law No. 19846 (Military-Police Personnel Pension Act) stipulates that members of the Armed Forces whose status changes to retiree or definitive dismissal without having completed the minimum service period receive as compensation a one-time lump sum amount equal to the most recent pensionable remuneration for each year of service. The State conceded that the alleged victim served 11 years and 7 months in the Armed Forces, while the minimum service requirement for receiving a pension is 15 years of continuous service.

19. Finally, the State argued that the facts alleged in the petition did not constitute violations of the rights guaranteed under the Convention and requested the IACHR to consider it inadmissible pursuant to Article 47(b) of the above-mentioned instrument.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

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

20. Under Article 44 of the American Convention, the petitioner is eligible to submit petitions to the Commission. The alleged victim is an individual to whom the Peruvian State has undertaken to respect and guarantee the rights established in the Convention. For its part, Peru ratified the American Convention on July 28, 1978. The Commission therefore has *ratione personae* competence to examine the petition.

21. The Commission has *ratione materiae and ratione loci* competence, inasmuch as the petition alleges violations of rights protected in the American Convention that allegedly occurred in the territory of a State Party to that treaty.

22. Finally, the Commission has *ratione temporis* competence because the obligation to respect and guarantee the rights protected in the American Convention was in force for the State when the facts alleged in the petition were said to have occurred.

B. Exhaustion of domestic remedies

23. Article 46(1)(a) of the American Convention stipulates as a requirement for admission of a petition alleging violations of the Convention that remedies under domestic law have been exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to allow national authorities to be seized of the alleged violation of a protected right and, if appropriate, resolve it before it is considered at the international level.

24. According to paragraphs 7 to 10 above, the current complaint refers to alleged violations of the American Convention regarding the forced retirement of Luis Alberto Ruesta Adrianzén, who was at the time a Major in the Peruvian Air force, which was alleged to have taken place in violation of applicable domestic legislation and without recognition of administrative due process guarantees. According to the allegations of the parties, through a contentious-administrative action lodged December 28, 2000, the alleged victim challenged the ministerial decision ordering his retirement. This action was decided in final instance by the Second Constitutional and Social Law Chamber of the Supreme Court of Justice in a ruling handed down on March 16, 2006, which was not subject to further review.

25. On the basis of the above considerations, the IACHR concludes that the petition meets the requirement set forth in Article 46(1)(a) of the Convention.

C. Filing period

26. Article 46(1)(b) of the Convention stipulates that for a petition to be admissible 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 exhausting domestic remedies.

27. As indicated in paragraph 24 above, the domestic remedies were exhausted when the Supreme Court of Justice handed down its ruling of March 16, 2006, which was subsequent to the date the petition was submitted to the IACHR. In this regard, compliance with the requirement established in Article 46(1)(b) of the Convention is inherently tied to the exhaustion of domestic resources and therefore satisfied.

D. Duplication of proceedings and *res judicata*

28. Article 46(1)(c) of the Convention stipulates that the admissibility of a petition is subject to the requirement that it "is not pending in another international proceeding for settlement," whereas Article 47(d) of the same instrument stipulates that the Commission shall consider inadmissible any petition that is substantially the same as one previously examined by the Commission or by another international organization. In the case in question, the parties neither argued the existence of either of these two circumstances, nor could they be inferred from the case file.

E. Characterization of alleged facts

29. Article 47(b) of the Convention stipulates that the Commission shall consider inadmissible any petition that does not state facts that tend to establish a violation of the rights guaranteed by the Convention.

30. The petition in question alleges that Mr. Luis Alberto Ruesta Adrianzén was forced into retirement by an arbitrary and baseless ministerial resolution. The petitioner indicated that upon filing an administrative complaint seeking his reinstatement in the Armed Forces, the Supreme Court of Justice determined that a situation of misappropriation had occurred [*sustracción de la material*] inasmuch as the petitioner received payment of social benefits and other economic compensation from the Peruvian Air Force.

31. According to the information presented by the parties, the judges of the Second Constitutional and Social Law Chamber of the Supreme Court of Justice ruled that Mr. Luis Alberto

Ruesta Adrianzén's complaint seeking his reinstatement in the Peruvian Air Force was inadmissible on the following grounds:

[...] the Constitutional Court (...) has established that the petitioner's having accepted payment of social benefits indicates that the employment relationship had been dissolved, and also implies that the petitioner fully consented to said dissolution of the employment relationship.

[...] it is clear that the petitioner accepted (...) social benefits and other compensation on April 6, 2000, as well as dismissal insurance (...) on May 11, 2000, facts that the petitioner in this case has not disputed and shall be considered accepted; moreover, the form requesting social benefits is presented on page 182 of the case file, which indicates as the reason for the request retirement for the purpose of replenishing the ranks.

[...] inasmuch as the petitioner has accepted his social benefits and other compensation, and has also fully consented to the extinguishment of the labor contract with the employer, there are no grounds for the petition and it should therefore be dismissed in light of the misappropriation that occurred; accordingly, this situation prevents this body from issuing a judgment on the merits of the matter (...).²

32. The petitioner argued that the grounds cited above are inconsistent with constitutional provisions, legislation, and decree-laws governing the employment regime for officers of the Armed Forces of Peru. He added that by upholding an arbitrary and baseless ministerial decision, the Peruvian Judiciary had failed to provide effective means of redress for the violation of his rights guaranteed in Articles 4, 5, 11, 17, 21, 24, 8, and 25 of the American Convention.

33. With respect to the allegations that the ruling handed down by the Supreme Court of Justice failed to consider established provisions of Peruvian law, the IACHR reiterates that it has no jurisdiction to oversee the domestic judicial authorities in their interpretation on the applicable procedural and substantive law.³ The IACHR has asserted it cannot act as a court of appeals to examine alleged mistakes of law or fact that domestic courts may have committed within the limits of their competence.⁴

34. The petitioner contended that there were irregularities in the conduct of the administrative proceeding, alleging that the presiding judicial authorities acted "under the pressure and manipulation of political power (...) [resulting in] numerous acts of corruption and interference of that power." The IACHR finds that such assertions are general in nature and have not been sufficiently tied to the administrative complaint filed by the alleged victim, and consequently, do not state facts that tend to establish a violation of the rights guaranteed by the Convention.

35. Finally, with respect to allegations that the legal counsel of the defendant party—the Peruvian Air Force—submitted documents outside the deadlines stipulated by domestic legislation, the petitioner has not provided clarification as to whether this situation had been addressed through the same contentious-administrative proceeding or through another such legal complaint. Furthermore, the legal evidence presented by the parties is insufficient to determine whether the legal counsel for the Peruvian Air Force submitted its briefs in violation of the applicable procedural law, and thereby violated the provisions set forth in Article 8.1 of the American Convention.

² Communication of the State received April 19, 2010, annexes, March 16, 2006 judgment of the Second Constitutional and Social Law Chamber of the Supreme Court of Justice, 16 March 2006, ACA No 2274-2005, operative conclusions 8, 9, and 10.

³ IACHR, Report No. 79/10, Petition No. 12.119, Inadmissibility, Association of Retired Petroleum Workers of Peru (Lima and Callao Metropolitan Areas), Peru, July 12, 2010, paras. 41 and 42; Report No. 27/07, Petition No. 12.217, Inadmissibility, José Antonio Aguilar Angeletti, Peru, March 9, 2007, paras. 41 and 43; and Report No. 39/05, Petition No. 792-01, Inadmissibility, Carlos Iparraguirre and Luz Amada Vásquez de Iparraguirre, Peru, March 9, 2005, paras. 52 and 54.

⁴ IACHR Report No. 45/04, Petition No. 369-01, Inadmissibility, Luis Guillermo Bedoya de Vivanco, Peru, October 13, 2004, para. 41; Report No. 16/03, Petition No. 346-01, Inadmissibility, Edison Rodrigo Toledo Echeverría, Ecuador, February 20, 2003, para. 38; Report No. 122/01, Petition No. 15-00, Inadmissibility, Wilma Rosa Posadas, Argentina, October 10, 2001, para. 10; and Report No. 39/96, Case No. 11.673, Inadmissibility, Santiago Marzioni, Argentina, October 15, 1996, para. 71.

36. In virtue of the foregoing considerations, the IACHR concludes that the allegations and elements of fact presented by the petitioner do not state facts that tend to establish a violation of the rights guaranteed in the American Convention, and, consequently, the petition does not satisfy the requirement set forth in Article 47(b) of said instrument.

V. CONCLUSIONS

37. By virtue of the foregoing considerations of fact and law, the Commission considers the petition inadmissible in accordance with Article 47(b) of the American Convention, because it does not state facts that tend to establish a violation of the rights guaranteed by said instrument. Accordingly,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this petition inadmissible for failing to comply with the requirement set forth in Article 47(b) of the American Convention.
2. To notify the State and the petitioner of this decision.
3. 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 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.