REPORT No. 119/11
PETITION 648-98
INADMISSIBILITY
MARCOS MAURICIO LECCA VERGARA *et al*.
PERU
July 22, 2011

I. SUMMARY

1. On November 10, 1998, the Inter-American Commission on Human Rights (hereinafter "the Commission," "the IACHR," or "the Inter-American Commission") received a petition lodged on their own behalf by Marcos Mauricio Lecca Vergara, Flora Javiera Carranza de Lecca, and Jaime Augusto Lecca Carranza (hereinafter also "the petitioners" or "the alleged victims"), claiming that the Republic of Peru (hereinafter "Peru," "the Peruvian State," or "the State") is responsible for violating the rights protected under Articles 8, 17, and 25 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"). The petitioners argued that in March 1993 they invested a large sum of money in the *Centro Latinoamericano de Asesoría Empresarial* (CLAE) [Latin American Business Consultancy Center] but that, because of the State's intervention in that company, they were unable to recover their capital. They added that final court judgments had ordered CLAE to return their capital, but that laws were enacted prohibiting the continuation of judgment enforcements against companies in dissolution. They argued that the Peruvian State had made it impossible for them to recover the capital they had amassed from the sale of all their family property, thus violating the right enshrined in Article 17 of the Convention.

2. The State maintained that the petition should be declared inadmissible since the alleged victims had not challenged the laws that prohibited the enforcement of compensation judgments rendered against CLAE. The State added that the acts denounced by the petitioners refer to noncompliance with the asset-related obligations of a private firm with which the alleged victims had signed contracts at variance with rules governing the financial system in Peru. In that connection, Peru argued that it can not be held internationally responsible for acts between private parties and requested that the IACHR declare the petition inadmissible under Article 47(b) of the Convention.

3. After examining the position of the parties, the Commission concluded that it is competent to hear the complaint, but that the petition is inadmissible because it failed to comply with the requirement established under Article 46(1)(a) of the Convention. The Commission decided to notify the parties of the present Inadmissibility Report, to make it public, and to include it in its Annual Report.

II. PROCESSING BY THE COMMISSION

4. On November 10, 1998, the IACHR received the petition and registered it as number 648-98. The petitioners submitted additional information on August 30, 1999, October 30, 2001, February 6 and September 7, 2004, May 5, 2005, and March 7, 2008. On August 4, 2008, the relevant parts of that documentation were transmitted to the State, which was given a period of two months to submit its response, in accordance with the Rules of Procedure of the IACHR.

5. On January 22, 2009, the State submitted its response, and on January 29 of the same year it transmitted the corresponding annexes. The petitioners transmitted additional observations through communications received on March 27, August 7, and November 3, 2009; January 15 and November 15, 2010; and January 3, 2011. For its part, the State presented additional information on May 28 and September 24, 2009, and on August 13, 2010. On April 12, 2011, the IACHR requested additional information from the petitioners, who sent their response on April 12 of the same year.

III. POSITION OF THE PARTIES

A. The petitioners

6. The petitioners stated that in March 1993 they deposited a large sum of money in the *Centro Latinoamericano de Asesoría Empresarial* (CLAE), in exchange for six letters of credit that would be paid off on a monthly basis, with the full amount of the invested capital recouped when the last letter of credit had been paid out in full. They alleged that the funds invested in the CLAE were obtained from the sale of a building and a vehicle, the liquidation of Mr. Marcos Mauricio Lecca's social benefits, and the disposal of other property used by their families. They noted that despite the signed contract with the CLAE and the letters of exchange they held, they had not managed to be paid even the first month of interest, since in April 1993 the executive branch intervened in that company and decided it should be closed. They pointed out that as a result of that action more than 200,000 Peruvians were unable to recover the savings they had entrusted to the CLAE.

7. The petitioners emphasized that, at the time the financial investment contract was signed with the CLAE, that entity had "existed and operated normally for 25 years, as there were no claims against it whatsoever either by investors or by state agencies that complained about it or questioned its operations." They indicated that "high-level officials at the time, including congressmen, who were made aware in advance of the measures the government planned to take against the CLAE, took advantage of that knowledge, and were the first to withdraw their funds from that entity." They added that the intervention and the closing of CLAE's offices took place "without its being prompted by complaints or negative reports by anyone [and], according to comments made at that time, the interests were political in nature."

8. The petitioners affirmed that while the intervention was taking place in the CLAE offices, they filed suit for payment, which resulted in final court judgments in their favor. According to the information provided, these judgments were issued by the Specialized Civil Courts of Lima between April and August 1994. They said that the promulgation of Law 26702 in December 1996 prohibited the enforcement of indemnity judgments against financial entities in dissolution or liquidation. They affirmed that said law was contrary to the Constitution of Peru, which established that "judgments of the judiciary have the rank of law, and authorities are obliged to faithfully comply with them, otherwise they would be held in contempt of court."

9. Finally, the petitioners argued that the prohibition on pursue enforcements of final judgments in their favor and the impossibility of recovering the family assets they deposited in CLAE constituted a violation of the rights embodied in Articles 8, 17, and 25 of the American Convention.

B. The State

10. The State affirmed that CLAE was established as a corporation authorized to provide advisory, consultancy, and business administration services. However, it began to receive large amounts of money from the general public with no authorization, by offering interest rates higher than those of the financial system's legally constituted entities. The State said that, with the adoption of Legislative Decree No. 637 in July 1991, the Superintendence of Banks and Insurance (SBS) was entitled to receive requests for formalization of the activities of entities engaged in the informal financial investment. It asserted that Legislative Decree No. 770, of October 28, 1993, established that the sanction against companies that did not meet the SBS requirements would be dissolution by the Supreme Court of Justice and the filing of criminal charges against their executives and legal representatives.

11. The State indicated that, under Legislative Decree 637, in July 1991 the CLAE executives requested formalization of their activities and the Center's conversion into a banking institution. The State affirmed that the SBS, after examining the financial balance sheets and the administrative management of the CLAE, ordered it to halt its financial placement operations, amend its Statute, and provide information on its holdings. It said that, inasmuch as these requirements had not been met, on February 10, 1994, it published, in the *Diario Oficial El Peruano* [the daily official newspaper], resolution 085-94, whereby the SBS rejected the request for conversion of CLAE into a financial institution, ordered the closing of its offices, called for its dissolution by the Supreme Court of Justice, and ordered the Public Prosecutor responsible for judicial matters for the SBS to bring criminal charges against its executives. In

that connection, it pointed out that on May 16, 1994, the Supreme Court of Justice issued Administrative Resolution No. 001-94-SP-CS, declaring the definitive dissolution of the CLAE.

12. The State affirmed that on January 2, 1995, Law No. 26421 had been promulgated, which governed the order in which the obligations of companies dissolved by the Supreme Court of Justice would be handled.[1] It said that Article 6.b of said law established "the prohibition of enforcement of judgments against companies dissolved by the Supreme Court of Justice. Peru emphasized that the alleged victims "have not questioned in the domestic jurisdiction the effects of Law Nº 26421 (…) applicable to companies that had been dissolved by the Supreme Court, such as CLAE S.A." Accordingly, it maintained that the petition does not meet the requirement for admissibility under Article 46(1)(a) of the Convention.

13. The State argued that the president of the CLAE, Carlos Manrique Carreño, and other members of the board of that company, were tried for a crime against property in the form of fraud and a crime against the financial and monetary system in the form of illegal financial transactions. It said that on January 15, 1998, those individuals were found guilty by the First Special Criminal Chamber of the Supreme Court of Justice and sentenced to eight-year prison term and to pay civil reparations to all investors who were not able to recover their money.

14. The State alleged that following the dissolution of CLAE, the company was liquidated in accordance with Article 22 of Legislative Decree No. 770. It pointed out that in August 1998 the 29th Civil Court of Lima appointed a Judicial Liquidation Commission, which allegedly was still active as of the date of adoption of this report. It claimed that it cannot be held internationally responsible for a contract concluded between the alleged victims and a private firm, especially when said contract was performed outside of the regulatory sphere for the financial system's legally constituted enterprises. Accordingly, it maintained that the facts set out in the petition do not constitute a violation of the rights embodied in the Convention, and it requested the IACHR to declare the petition inadmissible by virtue of noncompliance with the requirement established in Article 47(b) of said instrument.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

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

[1] In the pertinent parts thereof, the aforementioned law establishes the following:

> Article 1º.- The obligations owed by companies declared in dissolution by the Supreme Court shall be paid by said companies in the following order:
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> 1º. Remuneration and social benefits of their workers.
>
> 2º. The liquid credits of natural persons, individually or jointly, as a result of the placement of the funds, up to an amount equivalent to 6,000.00 *nuevos soles*. To that end, the Liquidation Commission shall set the criteria for the payment schedule, using as a reference the dates of the documents attesting to the amount of the credits, from immediately before the date of the decision declaring the dissolution of the company, and lesser amounts contained in those documents.
>
> 3º. The amounts due for electricity, potable water, and telephone services provided the company.
>
> 4º. Taxes.
>
> 5º. The credits of legal entities up to the amount referred to in subparagraph 2º of this article.
>
> 6º. Other creditors, whose entitlement has been duly proved.
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> […]
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> Article 4º.- […] the creditors referred to in subparagraphs 2º and 5º of Article 1º must present the original document of their respective credits, and a sworn statement noting the amount of the credit, with an indication of the capital and the corresponding date of placement of the funds.

15. The petitioners are authorized under Article 44 of the American Convention to lodge petitions with the Commission. The alleged victims are individuals with respect to whom the Peruvian State has pledged to respect and guarantee the rights enshrined in the Convention. For its part, Peru ratified the American Convention on July 28, 1978. The Commission therefore has competence *ratione personae* to examine the petition filed regarding the State's actions.

16. The Commission has competence *ratione materiae* and *ratione loci*, inasmuch as the petition deals with alleged violations of rights protected under the American Convention that took place within the territory of a state party to said treaty.

17. Lastly, the Commission has competence *ratione temporis* since the obligation to respect and guarantee the rights protected under the Convention was already in effect for the State on the date on which the facts alleged in the petition supposedly occurred.

B. Exhaustion of domestic remedies

18. Article 46(1)(a) of the American Convention establishes that for a petition lodged with the Inter-American Commission in accordance with Article 44 of the Convention to be admissible the remedies of domestic law must have been pursued and exhausted in accordance with generally accepted principles of international law. The purpose of this requirement is to enable the national authorities to be informed of the alleged violation of a protected right and, as appropriate, to have the opportunity to correct it before it is considered by an international jurisdiction.

19. The present claim alleges a failure to comply with the decisions issued by the Civil Courts of Lima between April and August 1994, which ordered the private company *Centro Latinoamericano de Asesoría Empresarial* (CLAE) to pay a certain sum of money to the alleged victims. The petitioners attached copies of the three judgments on compensation but did not report on the decisions adopted in the course of the respective enforcement proceedings.

20. The information presented by the parties indicates that the compensation judgments against CLAE were rendered unenforceable by the adoption of laws prohibiting the continued use of coercive measures against financial entities in judicial dissolution or liquidation. Whereas the petitioner stated that said prohibition was established by Law 26702, of December 1996, the State held that it was Law 26421, of January 1995, that prevented the continued execution of judgments against companies whose dissolution had been decreed by the Supreme Court of Justice. In addition, the State argued that the effects of said laws had not been challenged by the alleged victims, which means that they would not have met the requirement of prior exhaustion of domestic remedies.

21. In cases of noncompliance with decisions concerning asset-related obligations of private companies, the IACHR has pointed out that it has no jurisdiction to replace judicial authorities in deciding on matters of domestic law, such as seizures, auctions of goods, the priority of creditors, and other enforcement measures. It has said in this regard that before resorting to an international body the alleged victims must invoke the enforcement mechanisms provided under domestic law.[2]

22. On April 12, 2011, the Commission asked the petitioners for additional information on the following questions:

1. Why the petition was lodged with the IACHR years after the alleged prohibition of the enforcement of the judgments issued in their favor between April and August 1994;

2. If during the process of execution of those judgments any decision was issued to the effect that said judgments became unenforceable as a result of the adoption of Law 26421, of January 1995. If that was the case, please indicate the date of such decisions

[2] IACHR, 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, par. 24.

> and explain if they were challenged in the context of the execution process or of any other judicial remedy.

23. In a communication dated April 27, 2011, the petitioners said that "this petition was lodged in November 1988 [*sic*] because it was not easy to have access to the IACHR and that on that date an IACHR delegation had come to Lima to enable all of us who felt the need to pursue justice to contact said delegation …." Likewise, they indicated that:

> […] the government at that time issued the law that you mention and Law 26702, which specifically establish a PROHIBITION ON THE EXECUTION OF JUDGMENTS AGAINST FINANCIAL ENTITIES IN DISSOLUTION., and therefore, these laws having been issued, there is no need to issue decisions since the HIERARCHY of both norms is well above other types of legal provisions considered of lesser rank, such as decisions and others, which are obviously unnecessary and irrelevant.[3]

24. The IACHR notes that while the present petition refers to an alleged prohibition, by regulatory measures, of the enforcement of judicial decisions against a private company, the petitioners have not argued that they had challenged the effects of those norms. Nor can it be deduced from the case file that they raised the matter of incompatibility between laws 26421 and 26702, on the one hand, and the right to judicial protection embodied in Article 25 of the American Convention, on the other, either in the course of the processes for enforcement of the compensation judgments in their favor or through other judicial remedies. In this regard, the Commission considers that the petition does not meet the requirement for prior exhaustion of domestic remedies, established in Article 46(1)(a) of the Convention.

25. The Commission abstains, since the matter is rendered moot, from examining the other admissibility requirements provided in the Convention.[4]

V. CONCLUSIONS

26. Based on the factual and legal arguments presented above, the Commission concludes that the petitioner's allegations do not tend to characterize a violation of rights protected in the American Convention, and thus the complaint does not satisfy the requirement indicated in Article 47(b) of that instrument. As a result,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the present petition inadmissible by virtue of noncompliance with the prior requirement under Article 46(1)(a) of the American Convention.

2. To notify the State and the petitioners of this decision.

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

Done and signed in the city of Washington, D.C., on the 22nd day of July 2011. (Signed): Dinah Shelton, President; José de Jesús Orozco Henríquez, First Vice-President; Paulo Sérgio Pinheiro, Felipe González, and María Silvia Guillén, Commission Members.

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[3] Petitioners' brief received on April 27, 2011, second paragraph.

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