

REPORT No. 120/11
PETITION 55-05
INADMISSIBILITY
TEOFILO SÁNCHEZ MINAYA
PERU
July 22, 2011

I. SUMMARY

1. On February 1, 2005, the Inter-American Commission on Human Rights (hereinafter "the Commission", "the IACHR", or the "Inter-American Commission") received a petition presented in his own name by Teofilo Sánchez Minaya (hereinafter also "the alleged victim") and by the Diocesan Commission for Social Care Services (hereinafter also "the petitioners") alleging the violation by the Republic of Peru (hereinafter also "Peru", "the State", or "the State of Peru") of rights enshrined in the American Convention on Human Rights (hereinafter also "the American Convention", or "the Convention"). The petitioners stated that in April of 1995, Mr. Sánchez Minaya was retired as an officer of the National Police Force of Peru (PNP) by an arbitrary administrative decision. They indicated that only in December 2000 did the alleged victim become aware of this decision and that in February 2001, he challenged it through an administrative appeal action. They added that in August 2001, Mr. Sánchez Minaya lodged an *amparo* action, which was declared unfounded based on the fact that the administrative action had been filed outside the legal time limit. According to the petitioners, this reasoning was grounded on a mistaken evaluation of the evidence presented during the judicial proceedings.

2. The State maintained that the steps leading to the decision to retire the alleged victim derived from disciplinary proceedings conducted according to the rules of due process, in the framework of which the commission of a serious administrative infraction was established. It added that after lodging an appeal outside the time limit set out in the Law on General Rules for Administrative Proceedings, the *amparo* action subsequently relied on by Mr. Sánchez Minaya was declared inadmissible at last instance by the Constitutional Tribunal. In this regard, it maintained that the alleged victim unduly exhausted remedies under national law, and requested that the IACHR declare the complaint inadmissible by virtue of Article 46(1)(a) of the Convention.

3. After analyzing the position of the parties, the Commission concluded that it was competent to examine the claim, but that it was inadmissible due to a failure to comply with the provisions set out in Articles 46(1)(a) and 47(b) of the American Convention. The Commission decided to notify the present Inadmissibility Report to the parties, to publish it and include it in its Annual Report to the General Assembly of the OAS.

II. PROCEEDINGS BEFORE THE COMMISSION

4. On February 1, 2005, the IACHR received the petition and assigned to it No. 55-05. The petitioners presented additional information on May 24, June 2, and September 6, 2005, and on January 30 and July 17, 2008. On August 21, 2009, the relevant parts of this documentation were sent to the State with a time limit of two months to present its response, in accordance with the IACHR's Rules.

5. On October 26, 2009, the State sent its response and on November 11 of the same year, it submitted the respective annexes. The petitioners sent additional information on February 22, 2010. In turn, the State sent an additional brief on April 30, 2010.

6. On May 31, 2011, the IACHR requested additional information from the petitioners and from the State. On July 5, 2011 the State submitted its response. Until the date of approval of the present report, the petitioners had not sent the requested information.

III. POSITION OF THE PARTIES

A. Position of the Petitioners

7. They stated that on December 8, 1993, when Mr. Sánchez Minaya was stationed as an officer of the PNP in the Bolognesi province, Ancash Department, there was an attack on a drinks delivery truck, resulting in the death of a minor and bodily injuries to the vehicle's owner. They stated that the alleged victim underwent a criminal trial for alleged complicity with the perpetrators of these events for the offenses of homicide and aggravated robbery. They pointed out that on January 31, 1994, an administrative-disciplinary proceeding was initiated against him and that on April 3, 1995, he was dismissed by means of Managerial Decision No. 1262-95-DGPNP-DIPER-PNP. According to the allegations, on February 29, 2000, the First Mixed Chamber of the Superior Court of Ancash acquitted Mr. Sánchez Minaya of the criminal charges laid against him. On August 24, 2000, the Supreme Court of Justice upheld that decision.

8. The petitioners indicated that only in December 2000 did Mr. Sánchez Minaya become aware, unofficially, of the administrative decision to retire him from service. He therefore requested that the Personnel Manager of the PNP notify him of this decision in accordance with the law. They added that due to the absence of a response by the PNP, on February 7, 2001, Mr. Sánchez Minaya lodged an administrative appeal against Directorate Resolution No. 1262-95-DGPNP-DIPER-PNP, which was declared unfounded on July 17, 2001.

9. The petitioners alleged that on August 21, 2001, the alleged victim filed an *amparo* action requesting that the said Resolution not be applied. In accordance with the information submitted, after being examined by the Civil and Criminal Judge of the Province of Huaraz and by the Mixed Chamber of the Superior Court of Ancash, on June 7, 2004, the Constitutional Court declared the *amparo* inadmissible for a failure to fulfill the time limit set out in domestic law in relation to administrative appeal actions. The petitioners argued that this decision was based on a false premise of fact, since the alleged victim only became aware of the said Resolution in December 2001, thereby fulfilling the time limit laid down in the Law on General Rules for Administrative Proceedings, in force at the time of filing the *amparo*.

10. According to the petitioners, it was a matter for the judicial authority to evaluate the lack of proof of service of the Resolution leading to his retirement. They stressed that Article 82 of Supreme Decree 08-94-JUS, in force at the time of the events, provided that "the absence of due service shall be legally effective from the date on which the party concerned proves that it was received". They added that the Constitutional Tribunal's judgment of June 7, 2004 "merely referred to the fact that time limits established in the Law on Administrative Proceedings had been fulfilled, without taking account that in accordance with domestic legislation, Resolutions must be served in order to have validity."

11. The petitioners indicated that an official of the PNP connected with the same criminal trial held against Mr. Sánchez Minaya and retired under the same circumstances, succeeded in being actively reinstated after obtaining a favorable decision in an ordinary labor court. In this respect, they stressed that the Peruvian judicial authorities have issued various rulings on the same facts, concluding that there was a violation of the right to equality before the law enshrined in Article 24 of the Convention. Finally, they stated that by a mistaken interpretation of the procedural time limits established in domestic law and basing their decision on the premise of mistaken fact, the judicial authorities committed a violation of the rights enshrined in Articles 8 and 25 of the above-mentioned international instrument.

B. Position of the State

12. It maintained that even though Mr. Sánchez Minaya was acquitted through a criminal trial, the disciplinary-administrative proceeding involved in his retirement has a different scope and purpose. It stressed that when concluding that the alleged victim committed a serious administrative infraction, the PNP resolved the issue of his retirement based on, and in accordance with, the guarantees of administrative due process.

13. The State's account of the results of the *amparo* action filed by Mr. Sánchez Minaya is similar to that presented by the petitioners. It stressed that this action was declared inadmissible due to a failure to fulfill the time limits of the administrative appeal presented on February 7, 2001, against the Resolution ordering his retirement. It pointed out that the *amparo's* inadmissibility "was based primarily on a letter of complaint filed by the petitioner with the Ombudsman on December 13, 1999, and that the inference from this letter was that the petitioner knew about the contents of Resolution No. 1262-95-DGPNP-DIPER-PNP over a year before lodging the appeal dated February 7, 2001, before the Interior Ministry."¹

14. On April 30, 2010, the State presented a copy of a Resolution of the Constitutional Tribunal dated July 23, 2004, which states that current documents in the case file of the *amparo* proceedings indicated that Mr. Sánchez Minaya knew of Resolution No. 1262-95-DGPNP-DIPER-PNP several months before presenting the administrative appeal suit on February 7, 2001.

15. From the foregoing, the State argued that the alleged victim failed to duly exhaust the remedies of domestic law, thereby failing to fulfill the requirement set out in Article 46.1.a of the Convention.

16. Finally, regarding the alleged violation of the right to equality before the law, the State maintained that the petitioners' submissions are not encompassed by the text of Article 24 of the American Convention.

IV. ANALYSIS ON JURISDICTION AND ADMISSIBILITY

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

17. The petitioners are entitled, under Article 44 of the American Convention, to file petitions before the Commission. The petition states that the alleged victim is a individual towards whom the State of Peru undertook to respect and guarantee the rights enshrined in the Convention. For its part, Peru ratified the American Convention on July 28, 1978. Consequently, the Commission has competence *ratione personae* to examine the claim.

18. The Commission has competence *ratione materiae* and *ratione loci*, since the petition refers to violations of rights protected in the American Convention that allegedly took place within the territory of a state party thereto.

19. Finally, the Commission has competence *ratione temporis*, since the obligation of respecting and ensuring the rights protected by the American Convention was already in force for the State on the date on which the incidents described in the petition allegedly occurred.

B. Other Requirements for Admissibility of the Petition

1. Exhaustion of Domestic Remedies and Colorable Claim

20. Article 46.1.a of the American Convention provides that for a complaint lodged with the Inter-American Convention in compliance with Article 44 of the Convention to be admissible, the remedies available under domestic law must first have been pursued and exhausted in accordance with generally recognized principles of international law. Article 47.b of the same instrument establishes that the Commission shall declare inadmissible a petition that does not state facts that tend to establish a violation of rights guaranteed by the Convention.

¹ Although the IACHR sent the said communication of the State of Peru to the petitioners on May 17, 2010, the latter have not presented any observations and have not explained the content of the complaint before the Ombudsman dated December 13, 1999.

21. The current petition raises the violation of rights protected in the Convention based on allegedly arbitrary conduct on the part of the judicial authorities when examining an *amparo* lodged by Mr. Sánchez Minaya on August 21, 2001. It is alleged that in its judgment issued on June 7, 2004, the Constitutional Tribunal used criteria which conflicted with the evidence presented at trial and which contravened the relevant procedural rules. In effect, the argument is that the Constitutional Tribunal did not correctly assess the factual elements, which showed that Mr. Sánchez Minaya only knew of the Resolution leading to his retirement in December 2000.

22. In accordance with the information presented by the parties, the Constitutional Tribunal grounded its decision, where relevant, in the following way:

When the appellant lodged the appeal complaint before the Interior Ministry on February 7, 2001, against the Resolution on his retirement, he did so after more than 5 years after its being drawn up, and more than one year after becoming aware of the same, as can be seen from page 100; this administrative action is obviously a purely dilatory and egregiously inadmissible stratagem, since it contravenes Article 99 of the Law of General Rules for Administrative Proceedings, in force at that time; it must also be stressed that there cannot be an arbitrary prorogation of the time limits, nor that these can remain at a party's discretion.²

23. The available information indicates that in a Resolution of July 23, 2004, on the request for clarification filed by Mr. Sánchez Minaya, the same tribunal expressed the following:

2. That this College declared the suit lodged inadmissible, in essence considering that the administrative decision for retirement of the appellant was questioned, through an appeal, five years after becoming aware of the same, which presupposes that it has acquired *res judicata* effect and could not, as such, be appealed in an administrative venue.

3. That the foregoing considerations are supported by current documents in the case file, such as that of pages 2 (Directorate Resolution N° 1262-95-DG-PNP-DIPER-PNP, of April 3, 1995), 39 to 40 (Appeal of February 7, 2001) and, above all, that on pages 98 to 100 of the Special Folder before the Constitutional Tribunal (Complaint presented before the Ombudsman dated December 13, 1999).

4. That, consequently, it is clear that the complaint filed is manifestly inadmissible and that the request for clarification or rectification presented, is groundless.³

24. The said Resolution of the Constitutional Tribunal on the request for clarification was provided by the State of Peru in a communication received by the IACHR on April 30, 2010. On May 17, of the same year, this communication was sent to the petitioners but they have failed to present any observations. On May 31, 2011, the IACHR requested additional information from them in the terms set out below. At the date of approval of the present report, the petitioners have not sent a response.

in order that the IACHR have access to the elements necessary to reach a decision on the petition referred to, we request that you kindly send to this Secretariat:

1. the exact manner and date on which Mr. Teofilo Sánchez Minaya became aware of the contents of the resolution on his retirement; and

2. a copy of the complaint filed on December 13, 1999, with the Ombudsman, as mentioned in the Resolution issued by the Constitutional Tribunal of Peru on June 23, 2004, in the *amparo* proceedings in case No. N° 220-2002-AA/TC.

25. Within the framework of petitions set out in Article 44 of the American Convention, the IACHR is competent to examine the compatibility of laws, policies or practices with the rights of an

² Initial Petition received by the IACHR on February 1, 2005, annexes, Judgment of the Constitutional Tribunal of June 7, 2004, case file No. 220-2002-AA/TC, the single paragraph of the reasoning section.

³ State's communiqué received on April 30, 2010, annexes, Judgment of the Constitutional Tribunal of June 7, 2004, case file No. 220-2002-AA/TC, paras. 2-4.

individual under the above international instrument. However, the current petition maintains that in its decisions of June 7, and July 23, 2004, the Constitutional Tribunal erroneously assessed the factual elements brought to its attention and incorrectly interpreted the breadth of the relevant procedural law. On such submissions, the IACHR confirms its previous findings according to which it is not appropriate for it to replace the domestic judicial authorities in the interpretation of the scope of the rules of applicable material or procedural law.⁴ The IACHR has asserted that it may not act as an appellate court to examine alleged errors of fact or law that may have been committed by national courts within the limits of their competence.⁵

26. Due to the foregoing, the Commission concludes that the alleged violation of the rights protected in Articles 8 and 25 of the American Convention in view of allegedly irregular proceedings before the judicial authorities of Peru does not satisfy the requirement set out in Article 47.b of the Convention.

27. The IACHR has pointed out that, for the State to be afforded the opportunity of rectifying the alleged violation of Convention rights before being raised with an international instance, the judicial remedies filed by the alleged victims should comply with the reasonable requirements of admissibility established in domestic law.⁶ The Inter-American Court of Human Rights has underlined that the effectiveness of the judicial remedy implies that, potentially, when the formal prerequisites for admissibility laid down by domestic law are complied with, the judicial organ may assess its merits.⁷

28. Given that the *amparo* suit filed on August 21, 2001, was dismissed due to a failure to comply with the procedural requirements set out in the laws of Peru, and in the absence of specific allegations on the eventual incompatibility of the said legislation with the American Convention, the IACHR concludes that the alleged victim has not duly exhausted the remedies formulated before the courts of domestic law. In this sense, the IACHR considers that the current petition does not satisfy the requirement laid down in Article 46(1)(a) of the Convention.

29. In view of the above, the Commission will refrain from examining the other requirements for admissibility set out in the Convention.⁸

V. CONCLUSIONS

30. Based on the arguments of fact and law set out above, the Commission considers that the petition is inadmissible for failure to comply with the requirement set out in Articles 46(1)(a) and 47(b) of the American Convention, and consequently,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

⁴ IACHR, Report N° 79/10, Petition 12.119, Inadmissibility, Association of Retired Peruvian Oil Workers– Metropolitan Area of Lima and Callao, Peru, Peru, July 12, 2010, paras. 41 and 42; Report N° 27/07, Petition 12.217, Inadmissibility, José Antonio Aguilar Angeletti, Peru, March 9, 2007, paras. 41 and 43 and Report N° 39/05, Petition 792-01, Inadmissibility, Carlos Iparraguirre and Luz Amada Vásquez de Iparraguirre, Peru, March 9, 2005, paras. 52 and 54.

⁵ IACHR, Report N° 45/04, Petition 369-01, Inadmissibility, Luis Guillermo Bedoya de Vivanco, Peru, October 13, 2004, para. 41; Report N° 16/03, Petition 346-01, Inadmissibility, Edison Rodrigo Toledo Echeverría, Ecuador, February 20, 2003, para. 38; Report N° 122/01, Petition 15-00, Inadmissibility, Wilma Rosa Posadas, Argentina, October 10, 2001, para. 10 and Report N° 39/96, Case 11.673, Inadmissibility, Santiago Marzoni, Argentina, October 15, 1996, para. 71.

⁶ IACHR, Report N° 18/11, Petition 871-03, Inadmissibility, Víctor Eladio Lara Bolívar, Peru, March 23, 2011, para. 27.

⁷ I/A Court H.R., *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.

⁸ IACHR, Report N° 14/10, Petition 3576-02, Inadmissibility, *Employees Dismissed by Lanificio of Peru S.A.*, Peru, March 16, 2010, para. 35; Report N° 135/09, Petition 291-05, Inadmissibility, Jaime Salinas Sedó, Peru, November 12, 2009, para. 37 and Report N° 42/09, Petition 443-03, Inadmissibility, David José Ríos Martínez, Peru, March 27, 2009, para. 38.

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

2. To notify this decision to the State and the petitioner.

3. To publish this decision and to include it in its Annual Report to be presented 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.