REPORT No. 31/12
PETITION 12.222
INADMISSIBILITY
UNIFIED WATER AND SEWER SERVICE WORKERS' UNION OF AREQUIPA
PERU
March 20, 2012

I. SUMMARY

1. On October 13, 1999, the Inter-American Commission on Human Rights (hereinafter "the Commission," "the IACHR" or "the Inter-American Commission") received a petition lodged by the Unified Water and Sewer Service Workers' Union of Arequipa (*Sindicato Unitario de Trabajadores del Servicio de Agua Potable y Alcantarillado*) or SUTEPSAR for its Spanish acronym, (hereinafter, also "the petitioner"), on behalf of the workers belonging to said union (hereinafter "the alleged victims"), alleging that the Republic of Peru (hereinafter "Peru," "the Peruvian State" or "the State") is responsible for the violation of rights protected in the American Convention on Human Rights (hereinafter, "the Convention" or "the American Convention"). The petitioner alleged that in May 1997 Arequipa's Water and Sewer Service public utility arbitrarily decreased the salary readjustment previously granted to the alleged victims in December 1996. It contended that said decrease was challenged in an *amparo* suit for constitutional protection and the Peruvian judicial authorities dismissed their claim as groundless. It argued that the rulings issued during the *amparo* proceeding run afoul of the constitution and applicable labor law, as well as the rights ensured in Articles 21, 8 and 25 of the American Convention.

2. The State contended that the *amparo* suit brought by SUTEPSAR was adjudicated by competent tribunals and within the framework of a procedure, which safeguarded the fair trial rights of the alleged victims. It also argued that the petition before the IACHR has remained procedurally inactive for several years and, therefore, it requested the record to be closed pursuant to Article 48(1)(b) of the Convention. Lastly, Peru argued that the facts set forth in the petition do not tend to establish the violation of rights protected in the Convention, and requested the IACHR to declare the petition inadmissible in accordance with Article 47(b) of the same instrument.

3. After analyzing the positions of both parties, the Commission concluded that it is competent to hear the complaint, but that it is inadmissible pursuant to the requirement set forth in Article 47(b) of the American Convention, because it does not state facts that could establish the violation of rights protected in the aforementioned instrument. The Commission decided to notify the parties of the instant report on inadmissibility, publish it and include it in its Annual Report to the OAS General Assembly.

II. PROCESSING BY THE COMMISSION

4. On October 13, 1999, the IACHR received the petition, which was assigned the number 12.222. On October 13, 1999, the petition was forwarded to the State, which was granted a period of 90 days to submit its response, pursuant to the IACHR Rules of Procedure in force at the time.

5. The State submitted its response on March 20, 2000 and forwarded additional communications on May 15, August 3 and December 26, 2000. The petitioner submitted additional communications on December 16, 1999, February 25, May 8 and 11, July 7 and 13 and December 4, 2000, March 22, 2002, April 22, September 18 and December 11, 2003, January 13, February 23 and March 1, 2005.

6. On April 19, 2011, the IACHR requested up-to-date information from the petitioner, noting that if no reply was received, the case file could be archived, in accordance with Article 48(1)(b) of the American Convention. Subsequent to that date, the petitioners made additional submissions on May 19,

June 21, August 2 and 9, 2011. Likewise, the State presented submissions on May 5, September 20 and October 13, 2011.

III. POSITIONS OF THE PARTIES

A. The Petitioner

7. The petitioner asserted that, for several years, the alleged victims served as workers contracted under private labor law by the Water and Sewer Service public utility company of Arequipa (hereinafter "SEDAPAR"). It noted that under a collective arrangement entered into force in 1990, it was agreed that the salary raises of SEDAPAR employees would henceforth be the same as those of non unionized workers of State enterprises, whose pay raises were periodically set by the National Development Corporation or CONADE for its Spanish acronym (*Corporación Nacional de Desarrollo*). It indicated that said system was in effect on a regular basis until CONADE was dissolved in 1996, which created a legal void with regard to the entity that would establish SEDAPAR workers' salary readjustments.

8. The petitioner noted that on December 23, 1996, the aforementioned public utility company issued resolution 20787-96, the first operative point of which was "application of a Pay Increase of SEDAPAR personnel, as of December 01, 1996, up to 20% of their base pay, pending approval of the Ministry of Economy and Finances under the conditions that may be established." It was argued that 1997 Budget Law Nº 26706 established the maximum percentage at 9% for pay readjustments for workers of public companies and, consequently, SEDAPAR adopted resolution 21107-97, on May 22, 1997, ordering the readjustment up to 9% of its employees' pay.

9. The petitioner contended that, from December 1996 to April 1997, SEDAPAR paid its employees the amount of their salaries readjusted at 20%, as provided for in resolution 20787-96. It also argued that when resolution 21107-97 was adopted, SEDAPAR made the workers return the amount above the 9% readjustment received from December 1996 to April 1997. It alleged that this constituted an arbitrary reduction of SEDAPAR workers' salaries, particularly because the salary readjustment of 20% had already become part of their assets.

10. The petitioner asserted that on August 28, 1997, it filed an *amparo* suit for constitutional protection, seeking to overturn resolution 21107-97. It noted that on September 9, 1997, the Second Specialized Labor Court of Arequipa granted the *amparo* request and ordered SEDAPAR to continue paying out the 20% salary increase awarded in December 1996. The petitioner contended that as a result of an appeal filed by the utility company, the Mixed Matter Recess Chamber of the Superior Court of Justice of Arequipa overturned the trial court judgment and found the *amparo* suit to be groundless. The petitioner also argued that on January 28, 1999, the Constitutional Court upheld the ruling of the Mixed Matter Recess Chamber, serving SUTEPSAR notice thereof on July 12, 1999. According to the submissions, the Constitutional Court decision was based, among other things, on the fact that resolution 20787-96 of December 1996 was invalid inasmuch as it had not been approved by the Ministry of Economy and Finance.

11. The petitioner stressed that the judgments of the Mixed Matter Recess Chamber and the Constitutional Court "have not ruled on one of the points in dispute, which is the return of the raises [that have] already been paid out and which the company unilaterally imposed through unlawful withholdings." It asserted that said omission renders the aforementioned judgments null and void, as provided for in Article 171 of the Peruvian Code of Civil Procedure. It also contended that Peruvian courts did not take into account the provisions of Article 45, subparagraph M of the SEDAPAR Statute, which would empower granting raises for its board of directors and chief operating officers, without referring to prior authorization of the Ministry of Economy and Finance.

12. The petitioner argued that as established in the relevant provisions of the constitution and labor laws, "wages and salaries are sustenance-related and therefore, once they have been granted they cannot be unilaterally suppressed or withheld." It also contended that Article 648, subsection 6 of the

Peruvian Civil Code of Procedure provides for the non-attachable and non-garnishable nature of salaries and pensions when they do not exceed five units of procedural reference and, therefore, return of part of the salary readjustment received by the SEDAPAR employees from December 1996 to April 1997 would be unlawful.

13. Lastly, the petitioner asserted that the State is responsible for the violation of the rights set forth in Articles 21, 8 and 25 of the American Convention, in connection with the general obligation to ensure rights enshrined in Article 1(1) of the same instrument.

B. The State

14. The account of State was similar to that of the petitioner with regard to the decisions issued by the different courts in ruling on the *amparo* claim filed by SUTEPSAR on August 28, 1997. It asserted that the *amparo* claim was brought properly and in keeping with domestic procedural requirements. It also noted that "the instances and legal remedies belonging to the administration of justice were respected, in keeping with the time periods set forth by law and the means of defense that are afforded by law to every citizen." It asserted that the IACHR "does not constitute one more jurisdictional body within the judicial procedures regulated in the Peruvian State, nor does it have the legal authority to review judicial proceedings that are conducted in domestic courts."

15. In a communication received on May 5, 2011, Peru alleged that the case remained inactive for several years and requested that it be archived pursuant to Article 48(1)(b) of the Convention. In a communication received on October 13, 2011, it noted that, even though the petitioner had made new submissions throughout 2011, this would not be sufficient to restart the proceedings before the IACHR. In this regard, "it reiterated its claim that the case has been without procedural movement since 2001, that is to say, without procedural activity and/or any additional written submissions filed by SUTEPSAR within the case before the Commission."

16. Lastly, the State argued that the facts set forth in the petition do not tend to establish the violation of rights set forth in the American Convention, and therefore requested the IACHR to find the claim inadmissible in accordance with Article 47(b) of the aforementioned instrument.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

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

17. The petitioner is empowered by Article 44 of the Convention to submit petitions to the Commission. The alleged victims, members of SUTEPSAR, are individuals whose rights the Peruvian State is bound to respect and ensure under the Convention. For its part, Peru ratified the American Convention on July 28, 1978. Accordingly, the Commission is competent *ratione personae* to consider the petition.

18. The Commission is competent *ratione loci and ratione materiae* inasmuch as the petition contains allegations of violations of rights protected by the American Convention that took place within the territory of a State party to that treaty.

19. Lastly, the Commission is competent *ratione temporis* because the obligation to respect and ensure the rights protected by the American Convention was already in force for the State at the time of the events alleged in the petition.

B. Exhaustion of Domestic Remedies

20. For a petition lodged before the Inter-American Commission pursuant to Article 44 of the Convention to be admissible, Article 46(1)(a) of the American Convention requires remedies under domestic law to have been pursued and exhausted in accordance with generally recognized 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.

21. The instant claim involves alleged violations of the American Convention based on supposedly arbitrary decisions made by the judicial authorities, which heard an *amparo* suit brought by SUTEPSAR on August 28, 1997. According to the arguments of the parties, said suit was ultimately adjudicated under a decision of the Constitutional Court on January 28, 1999.

22. Based on the foregoing, the IACHR finds that the petition meets the requirement set forth in Article 46(1)(a) of the Convention.

C. Timeliness of the petition

23. Article 46(1)(b) of the Convention provides that, in order for a petition to be found admissible, it must have been lodged within a period of six months from the date on which the interested party was notified of the final judgment that exhausted domestic remedies.

24. As stated in paragraph 21 *supra,* domestic remedies were exhausted under a decision issued on January 28, 1999 by the Constitutional Court. According to the information provided by the parties, that decision was conveyed to SUTEPSAR on July 12, 1999. Since the instant petition was received on October 13, 1999, the requirement set forth in Article 46(1)(b) of the Convention has been met.

D. Duplication and international *res judicata*

25. As established in Article 46(1)(c) of the Convention, for a petition to be admitted, the subject matter must not "be pending in another international proceeding for settlement" and, as provided in Article 47(d) of the Convention, the Commission shall not admit any petition that is substantially the same petition or communication as one previously examined by the Commission or by another

international body. In the instant case, the parties have not claimed that either of these two circumstances applies nor can this be deduced from the case file.

E. Characterization of the facts alleged

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

27. In the instant petition, violations of the rights set forth in Articles 21, 8 and 25 of the Convention are alleged, based on presumably irregular proceedings of the judicial authorities, which heard an *amparo* claim brought by the alleged victims on August 28, 1997. The purpose of the claim is to overturn resolution Nº 21107-97, under which the public utility company SEDAPAR decreased the salary readjustment previously established in resolution 20787-96, to a maximum of 9%.

28. The information provided by the parties indicates that when the final decision was handed down by the highest court on the *amparo* claim brought by the alleged victims, the Constitutional Court held forth as follows:

> 1. The union bringing the suit maintains that its constitutional rights have been violated regarding [a remuneration] which, as stated in claim recorded under page thirty-one in the file, was increased under Resolution Nº 20787-96-S-1002 by twenty per cent over the amount being earned, being paid on a regular basis until the month of April of 1997; however, under eighty-three paged Resolution Nº 21107-97-1010, dated May 22, 1997, in approving the update to the Table of Assignation of Pay starting in November 1996, the aforementioned increase was reduced for them.
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> 2. That, the reduction of the twenty per cent increase to a nine per cent increase, was because the 1997 Budget Law established said percentage as the maximum increase amount.
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> 3. That, Article 31 of 1996 Budget Law of the Public Sector Nº 26553, establishes that the pay scale and policy of entities of the State (agencies of the State) are approved by Supreme Resolution [which is] signed into force by the Ministry of Economy and Finance, and that this act did not take place with the aforementioned increase; in other words, that the measure taken under Resolution Nº 20787-96/S-1002 was not legally completed so as to be valid.
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> 4. That subparagraph 1 of the aforementioned Resolution "Order the application of the increase in Pay of personnel of SEDAPAR, starting on December 1, 1996, up to twenty per cent of the base salary, subject to approval of the Ministry of Economy and Finances under the conditions that may be established."
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> 5. That, therefore, the entity that is the defendant in this claim, in applying the 1996 and 1997 Budget Law for the Public Sector, did not violate any constitutional right.[1]

29. In the context of the petition system provided for in Article 44 of the American Convention, the IACHR is competent to examine whether laws, policies or practices are compatible with the rights of a person under the aforementioned international instrument. However, the instant petition contends that the above-cited resolution of the Constitutional Tribunal erroneously interpreted the Political Constitution of Peru, the Peruvian Code of Civil Procedure, the Statute of SEDAPAR, the laws of the 1996 and 1997 Budget of the Public Sector, among other applicable provisions of substantive and procedural law. In this regard, the IACHR confirms its doctrine according to which it is not entitled to replace domestic judicial authorities in the interpretation of applicable rules of procedural and substantive law.[2] The IACHR has asserted that it cannot act as an extraordinary judicial instance to examine alleged errors of law and fact that domestic courts may have committed within the scope of their competence.[3]

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[1] Original petition received by the IACHR on October 13, 1999, annex, Judgment of the Constitutional Tribunal of January 28, 1999, Case File No. 962-98-AA/TC, Grounds 1 to 5.

[2] IACHR, Report No. 79/10, Petition 12.119, Inadmissibility, Association of Retired Oil Industry Workers of Peru–Metropolitan Area of Lima and Callao, Perú, July 12, 2010, paras. 41 and 42; Report No. 27/07, Petition 12.217, Inadmissibility,

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30. The IACHR notes that a pronouncement on the merits of the instant petition would be tantamount to supplanting the interpretation of the Peruvian Constitutional Court regarding the validity of specific administrative acts issued by the public utility company SEDAPAR, in light of applicable labor and administrative law. In the absence of evidence indicating that the decision of the Constitutional Court cited above was based on criteria that is either arbitrary or contrary to the rights enshrined in the American Convention, the facts raised by the petitioner do not tend to establish the violation of the aforementioned international instrument.

V. CONCLUSIONS

31. Based on the foregoing arguments of fact and law, the Commission concludes that the petitioner's allegations do not tend to establish the violation of the rights protected in the American Convention and, therefore, the petition does not meet the requirement set forth in Article 47(b) of said instrument. Consequently,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant petition inadmissible inasmuch as it does not fulfill the requirement set forth in Article 47(b) of the American Convention.

2. Notify the State and the petitioner of this decision.

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

Done and signed in the city of Washington, D.C., on the 20th day of March 2012. (Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Felipe González; Second Vice-President, Dinah Shelton, Rodrigo Escobar Gil, Rosa María Ortiz and Rose-Marie Belle Antoine, Commission Members.

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José Antonio Aguilar Angeletti, Perú, March 9, 2007, paras. 41 and 43 and Report No. 39/05, Petition 792-01, Inadmissibility, Carlos Iparraguirre and Luz Amada Vásquez de Iparraguirre, Perú, March 9, 2005, paras. 52 and 54.

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