

REPORT No. 120/12
PETITON 1119-06
INADMISSIBILITY
SONIA VICTORIA WILSON
GUATEMALA
November 13, 2012

1. On October 19, 2006, the Inter-American Commission on Human Rights (hereinafter “the Commission,” “the Inter-American Commission”, or “the IACHR”) received a petition submitted by Sonia Victoria Wilson (hereinafter the “petitioner”), against the State of Guatemala (hereinafter “the State,” “Guatemala,” or “the Guatemalan State”) for the alleged failure to carry out a judgment for reinstatement issued by the First Labor and Social Security Judge of the First Economic Zone of Guatemala of September 14, 2002, which is said to have ordered the reinstatement of Ms. Sonia Victoria Wilson (hereinafter the “alleged victim”) as Secretary General of the Sindicato de Trabajadores de Mantenimiento de Finanzas Públicas (Union of Maintenance Workers of Public Finance, hereinafter “SINTRAMAS”), a decision that at the same time was said to have been upheld on appeal and ratified by an *amparo* judgment.

2. The petitioner alleges that the State is responsible for the violation of Articles 1 (Obligation to Respect Rights), 2 (Duty to Adopt Provisions of Domestic Law), 3 (Right to Juridical Personality), 4(1) (Right to Life), 5(1) (Right to Humane Treatment), 7(1) (Right to Personal Liberty), 8(1) (Right to a Fair Trial), 9 (Freedom from Ex Post Facto Laws), 10 (Right to Compensation), 11 (Right to Privacy), 13 (Freedom of Thought and Expression), 15 (Right of Assembly), 24 (Right to Equal Protection), 25 (Right to Judicial Protection), 29 (Restrictions Regarding Interpretation), and 33 (Competent Organs) of the American Convention on Human Rights (hereinafter “the American Convention,” or “the Convention”) to her detriment and to her family’s detriment. In addition, she alleges that her claim is admissible due to the unwarranted delay in the decision in the domestic jurisdiction.

3. The State argues that the petition is not admissible because the facts alleged do not make out a violation of the American Convention.

4. After examining the parties’ positions, the Commission concludes that it is competent to take cognizance of the petition in question, and that the case is inadmissible, in light of Articles 46 and 47 of the American Convention. The Commission also decides to notify the parties of this decision, publish it, and include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCESSING BEFORE THE INTER-AMERICAN COMMISSION

5. The Commission received the petition on October 19, 2006, and assigned it number 1119-06. On April 9, 2007, the Commission forwarded the pertinent parts of the petition to the State and asked that it submit its answer to the complaint within two months, in keeping with Article 30(3) of the Commission’s Rules of Procedure. On June 12, 2007, the State filed its answer.

6. In addition, the IACHR received information from the petitioner on the following dates: July 24, 2007; November 21, 2007; September 17, 2008; January 21, 2009; and April 2, 2009. Those communications were duly forwarded to the State. In addition, the IACHR received observations from the State on the following dates: June 25, 2007; September 27, 2007; February 19, 2008; March 18, 2008; November 24, 2008; and May 14, 2009. Those communications were duly forwarded to the petitioner.

III. THE PARTIES’ POSITIONS

A. The petitioner

7. The petitioner, Sonia Victoria Wilson, reports that she worked as Secretary General of the trade union Sindicato de Trabajadores de Mantenimiento y demás dependencias administrativas del

Ministerio de Finanzas Públicas (“SINTRAMÁS”) for six consecutive years as of 1996. She argues that after the time period for trade union irremovability to which she had a right had lapsed she was removed on September 2, 2002, by an erasure in a form for applying a loan from the Banco de los Trabajadores. She states that she does not understand how the deletion occurred, but the result was that her arguments were not considered when she pursued administrative remedies, and she was dismissed. She reports that on August 29, 2002, the Ministry of Public Finance of Guatemala issued ministerial decree No. 293-2002 ordering her removal from office.

8. She adds that on September 4, 2002, she brought a reinstatement proceeding (No. 379-2002) before the First Labor and Social Security Court for the First Economic Zone and the Judge ordered her reinstatement on September 19, 2002; that decision was upheld on appeal and ratified in an *amparo* proceeding. In addition, according to the documents submitted, on September 5, 2002, the petitioner is said to have appealed to the Director of the National Civil Service Office the decision of ministerial decree No. 293-2002 of removal, without obtaining any response.

9. She lists the domestic remedies pursued to get the State to carry out the order of the court to reinstate her. She reports that she was reinstated as of August 30, 2007, and that on August 31 of the same year she presented her voluntary resignation. She reports that she was paid the benefits owed. Nonetheless, she indicates that still pending is the payment of an amount corresponding to vacation pay and one day of salary. She reports that as a result she brought a lawsuit to demand payment of what she considers outstanding. She asks that the complaint not be considered concluded, and that it not be archived, until the State has fully paid her the benefits and salary that she alleges are still owed to her.

B. The State

10. The State argues that according to ministerial decree 293-2002 of August 29, 2002, Ms. Wilson was removed from the position as professional assistant III in keeping with the provisions of Article 76(4) and (12) of the Civil Service Act, because she was allegedly in circumstances considered grounds for a justified dismissal. It adds that Ms. Wilson’s dismissal was not in retaliation for her trade union work, but due to transgressions committed by the petitioner. It reports that according to Act No. 5,609 of the Ministry of Labor, Department of Labor Registry, Ms. Wilson assumed the post of Secretary General of the “SINTRAMAS” trade union on April 6, 1998, and that said directing position included the two-year period.

11. On the internal procedure, it indicated that the First Labor and Social Security Court of the First Economic Zone ordered Ms. Wilson’s reinstatement on September 19, 2002, a decision upheld on appeal and ratified by judgment on *amparo*. It also details the remedies invoked by the parties in that proceeding.

12. In its observations of March 18, 2008, it reports that the Ministry of Public Finance reached an arrangement with Ms. Wilson and reinstated her, which was communicated to the Labor and Social Security Judge of the First Economic Zone on September 5, 2007. It adds that the Ministry issued Resolution 12-2007, which it attaches to the record, in which it was determined to reinstate the petitioner as of August 30, 2007, in the position of professional assistant III in the Office of Cadastre and Assessment of Real Property, and it was ordered that the salaries that Ms. Wilson had not received from September 3, 2002 to August 29, 2007, be paid to her. It also indicates that Ms. Wilson requested her voluntary retirement on August 31, 2007, which was resolved through Ministry of Public Finance Decree on Retirement 70-2007, a copy of which it attaches.

13. In a note received on November 24, 2008, the State reported that Ms. Wilson was paid “the salaries not received from her removal until her effective reinstatement, in keeping with the judgment issued by the competent judge, as well as the labor benefits and compensation to which she had a right as per the provisions of the labor laws in force in the country.” It indicated that the amount paid to the petitioner was the sum of 297,775.10 quetzals in compensation and 119,411.79 as total payment for

amounts due on voluntary retirement, and attached a copy of the salary payments paid and signed by Ms. Sonia Wilson.

14. As regards the petitioner's arguments that she wasn't paid amounts related to vacation periods, it indicates that the benefits paid corresponded to all those due as a matter of law, and that Ms. Wilson signed the document certifying release from employment as well as the voluntary retirement form, accepting and being in agreement with the payments made by the Ministry of Public Finance, as appears in the attached documents.

15. With respect to the remedy pursued by the petitioner before the courts of justice for the alleged amounts due, it argues that she cannot have recourse to the Inter-American Commission as a supplemental procedure to obtain payment of the alleged benefits not paid by the Ministry of Public Finance. It adds that the rule of prior and special exhaustion enables the states to resolve problems domestically. It is of the view that there is no violation of due process since based on the domestic law provisions all of the petitioner's labor benefits were paid to her. Accordingly, it asks that this case be found inadmissible, considering that there is no element to support a different action.

IV. ANALYSIS

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

16. The petitioner is authorized by Article 44 of the American Convention to submit complaints to the IACHR. The petition notes, as alleged victims, individuals with respect to whom the Guatemalan State undertook to respect and ensure the rights enshrined in the American Convention and in other international instruments.

17. The Commission observes that the petitioner alleged that the persons affected by the facts raised in the claim were her and her family members. In this regard, mindful of the scope of the claim, as well as the information presented, the IACHR considers that the alleged victim in this petition is Ms. Sonia Victoria Wilson.

18. In addition, the Commission indicates that Guatemala ratified the American Convention on May 25, 1978; therefore, the Commission is competent *ratione personae* to examine the petition.

19. The Commission is competent *ratione loci* to take cognizance of the petition, insofar as it alleges violations of rights protected in the American Convention that would have taken place in the territory of a state party to that treaty. The IACHR is competent *ratione temporis* insofar as the obligation to respect and ensure the rights protected in the American Convention was already in force for the State on the date on which the facts stated in the petition are alleged to have taken place. Finally, the Commission is competent *ratione materiae*, because the petition alleges violations of human rights protected by the American Convention.

B. Other requirements for the admissibility of a petition

1. Exhaustion of domestic remedies

20. Article 46(1)(a) of the American Convention provides that in order for a complaint submitted to the Inter-American Commission in keeping with Article 44 to be admissible, one must have pursued and exhausted domestic remedies in keeping with generally recognized principles of international law. The purpose of this requirement is to afford the national authorities an opportunity to take cognizance of the alleged violation of a protected right and, if appropriate, to resolve it before it is heard by an international body.

21. In the instant case the parties agree that domestic remedies were exhausted, with respect to the dismissal of Ms. Sonia Wilson, with the decision of the First Labor and Social Security

Court of the First Economic Zone that ordered her reinstatement on September 19, 2002, a decision upheld on appeal and ratified in an *amparo* judgment.

22. In addition, according to the information submitted by the parties, as of May 2009 a remedy filed by Ms. Wilson to demand payment of some benefits that she claimed were outstanding is still pending. The IACHR considers it is not necessary to analyze whether an exception to the exhaustion requirement applies to that remedy, in light of the following analysis on characterization of the facts alleged.

2. Characterization of the facts alleged

23. For purposes of admissibility, the IACHR must decide whether the arguments set forth facts that could characterize a violation of the American Convention, as stipulated by its Article 47(b), and whether the petition is “manifestly groundless” or “obviously out of order,” as per Article 47(c).

24. In the instant case, the parties agree that Ms. Sonia Victoria Wilson was dismissed from the Ministry of Finance on September 2, 2002, and that on September 19, 2002, the First Labor and Social Security Court of the First Economic Zone ordered her reinstatement.

25. Likewise, the parties agreed that Ms. Wilson was reinstated in the Ministry of Public Finance on August 30, 2007, and that subsequent to the reinstatement she voluntarily retired from the institution. The State reported that the “petitioner accepted and signed the release corresponding to the payment of all her labor benefits,” indicating that Ms. Wilson received the payment of benefits and compensation owed as salary not received from September 3, 2002, to August 29, 2007, including different benefits, and that she received the payment for voluntary retirement. The petitioner, for her part, reported that the State had made partial payment of the labor benefits owed because still pending was the amount corresponding to vacation pay plus one day of salary, a matter over which she brought an action domestically. The Commission observes that with respect to the information presented by the State to the effect that the petitioner accepted and signed a release, it has not received arguments or evidence to the contrary from the alleged victim, and accordingly it cannot define why the dispute pending would represent a possible violation of a right protected under the American Convention.

26. In conclusion, based on the arguments of the parties and the evidence in the record, the IACHR does not find any facts which, if proven, would tend to establish a violation of human rights. The Commission concludes that in light of the foregoing, the facts alleged do not tend to establish a violation of rights recognized in the American Convention and, therefore, the petition should be found inadmissible pursuant to Article 47(b) of the American Convention.

V. CONCLUSION

27. Based on the arguments of fact and law set forth above, the Inter-American Commission concludes that the petition is inadmissible in keeping with what is established in Article 47(b) of the American Convention, since it does not state facts that constitute any violation of the rights protected by that Convention.

28. In view of the foregoing considerations,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To find the instant petition inadmissible, under Article 47(b) of the Convention.
2. To transmit this report to the petitioner and the State.
3. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 13th day of the month of November, 2012. (Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Felipe González, Second Vice-President; Rosa María Ortiz and Rose-Marie Antoine, Commissioners.