

REPORT No. 13/13
PETITION 670-01
INADMISSIBILITY
GERARDO PÁEZ GARCÍA
VENEZUELA
March 20, 2013

I. SUMMARY

1. On September 24, 2001 the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition lodged by Gerardo Páez García (hereinafter “the petitioner” or “the alleged victim”) alleging international responsibility on the part of the Bolivarian Republic of Venezuela (hereinafter “the State” or “the Venezuelan State”) for the illicit withholding by the Universidad Pública de Carabobo (hereinafter “the university”) of payment of the accrued interest on social benefits.

2. The petitioner did not identify the specific rights allegedly violated; however, from the narrative of events, the Commission understands that the case involved possible violations of Gerardo Páez García’s rights to judicial protection, private property, and the judicial guarantees enshrined in Articles 8, 21, and 25 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”), as well as of the obligation to respect and guarantee the rights established in Article 1.1 of the Convention. The State argued that the complaints were inadmissible, as the petitioner had failed to meet the requirement of Article 46.1.a) of the Convention of exhausting the remedies under domestic law and that it had not violated the petitioner’s right to collect social benefits.

3. Without prejudging the merits of the petition, after analyzing the positions of the parties and compliance with the requirements spelled out in Articles 46 and 47 of the American Convention, the Commission decided that the complaint was inadmissible due to the petitioner’s failure to meet the requirement in Article 47.a) of the American Convention in relation to Article 46.1.a) because he had failed to exhaust the remedies under domestic law. The Commission also decided to notify the parties of this decision and to publish and include it in its Annual Report before the OAS General Assembly.

II. PROCESSING BY THE COMMISSION

4. On September 24, 2001 the IACHR received the petition (recorded as No. 670-01) and on February 11, 2002 transmitted the pertinent parts to the State for its comments. On April 26, 2002 the petitioner submitted additional information, which was transmitted to the State for its comments. On October 17, 2002 the State submitted its response, which was transmitted to the petitioner for his comments.

5. On April 4, 2005 and July 16, 2007 the Commission reiterated its request for information to the petitioner. On March 19, 2008, the State submitted comments, which were transmitted to the petitioner for his comments. The petitioner submitted information on May 15 and October 27, 2008, which was transmitted to the State for its comments. On August 8, 2011, the Commission transmitted additional information provided by the petitioner to the State and reiterated its request for information. On September 9, 2011, the State submitted its response, which was transmitted to the petitioner for his information.

III. POSITIONS OF THE PARTIES

A. Position of the petitioner

6. As background, the petitioner stated that in 1989 he had filed suit against the Universidad Pública de Carabobo in the Carabobo State Labor Tribunal for the payment of social benefits. This suit culminated in a judicial agreement between the university and the petitioner dated October 29, 1990 and approved by the First Superior Court for Civil, Transit, Labor, and Children's Matters of the Carabobo State District Court.¹

7. Under this agreement, the university was to pay social benefits to the petitioner. According to the petitioner, the responsibility for calculating the interest payment obligation was given to the office of the Vice Rector of the university, which determined that the interest on the social benefits from 1975 to May 31, 1991 came to 1,073,333.29 bolivars. However, when the university administration changed hands in 1991, the new Rector refused to honor the agreement that had been approved and rescinded the order to pay the interest that came out of the approval proceeding.

8. The petitioner stated that, given the failure to pay the interest, he filed suit to execute the transaction and be paid "as a trust" the sum of 1,126,300.50 bolivars, plus indexation of the amounts requested. He added that on April 24, 1991, the First Tribunal of the Carabobo State Labor Court of First Instance had ruled his request inadmissible² and that on March 22, 1993,³ the Ancillary Superior Court for Civil, Mercantile, Transit, and Labor Matters upheld its inadmissibility with a clarification on June 9, 1993. These rulings had concluded that the university was obliged to pay only the 67,383.00 bolivars requested by the petitioner "in his claim and that said amount was not subject to monetary adjustment through a ruling's complementary expert's report [*experticia complementaria del fallo*]." The petitioner stated that on June 16, 1993 he filed an appeal to reverse the ruling, which was admitted on July 2 of that same year, but since it was never formalized, the Civil Appeals Chamber of the Supreme Court voided the appeal on June 29, 1994.

9. The petitioner stated that he petitioned the Second Tribunal of the Carabobo District Labor Court of First Instance (hereinafter "the Second Court") to order a complementary expert's report to the ruling of March 22, 1993 for a monetary adjustment to the amount owed him. This order was issued on December 5, 1994, and on February 1, 1995 the university requested a clarification and explanation of the order. On March 1, 1995 the Court declared the university's request inadmissible and upheld the ruling of March 22, 1993 (and judgment order that clarified it), accepted the report of the accountants adjusting the amount of interest and ordered the university to pay 6,161,184.84 bolivars.

10. The petitioner stated that on March 16, 1995 the university filed a constitutional amparo motion to overturn the decision of the Second Court. Ruled admissible on April 26, 1995, this motion resulted in the reversal of the March 1, 1995 ruling of the Second Court in favor of the petitioner. The petitioner noted that on April 27, 1995 he appealed the decision that reversed the ruling, but the appeal was rejected by the Constitutional Chamber of the Supreme Tribunal of Justice on April 6, 2001.

¹ From the information provided by the petitioner, it is understood that the agreement stated that "the trust payment would be made by the university at a time to be determined". "Trust payment" is understood to be the payment of seniority benefits which occurs when the employment contract is terminated, in a definite way, deposited and liquidated monthly, in an individual trust or fund of seniority benefits or accredited under his/her name in the business' accounting.

² The information provided by the petitioner indicates that the Court declared the petition inadmissible "as [...] the trust that was requested and not included in the transaction that put an end to the case is that determined by the actor in the referenced [...] documentation of the complaint, [...], Bs. 67,383.00 in interest accrued in the lapse of time also determined by the actor in the complaint. The actor, therefore, cannot through the proceedings to execute the transaction, file a claim for matters that are entirely beyond the complaint and the transaction agreement itself [...]."

³ Information provided by the petitioner indicates that it was ruled that "the court being unable to offer defenses nor agree to more than what was petitioned at the risk of incurring the irregularity of ultra petita, and therefore having to confine itself to the limits set by the parties [...] considers it proper to pay the [...] Bs. 67.383,00 in interest requested [...]."

11. The petitioner also argued that the university's Rector had recognized his right to the interest on the benefits by submitting the paperwork for the payment to the Ministry of Education for processing; noting that in 1997, the office of the Vice Rector had issued a preliminary report on the interest accrued as of December 31, 1996. He also stated that in 2000, he received two statements of interest on social benefits from the university, the first as of December 31, 1999⁴ and the second as of September 30, 2000.⁵

12. The petitioner stated that on September 25, 2000, the office of the university's Administrative Vice Rector processed the [request for] payment of 19,934,826.00 bolivars in interest on his benefits and that on September 26, 2000 a preliminary list of the staffing liabilities of the national universities from 1975 to 1999 was circulated in which his name appeared. The petitioner stated that he was "unpleasantly surprised when [he] was informed that [his] check had not been issued, because [he] simply was not going to be paid." He therefore considered his interest payments to have been illegally withheld since November 2000.

13. The petitioner believed that "the Universidad de Carabobo issued administrative regulations creating subjective rights that the institution must respect, and it is obliged to enforce them."

14. From information provided by the petitioner, it is understood that between November 2000 and September 2001, the alleged victim submitted requests to the University Board, the office of the university's Administrative Vice Rector, the university's Internal Comptroller, the National Council of Universities, and the Ministry of the Secretariat of the Office of the President of the Republic, *inter alia*, for payment of the interest and sanctions on the parties who had withheld the payment. Specifically, he told the Comptroller that he had been excluded from the payment list of November 20, 2000 because he had supposedly collected the interest, which was false. After consulting with the university's Legal Office, the Internal Comptroller responded on January 25, 2001 that

"the University [...] has not failed to comply with any decision as Professor Páez alleges, since, the ruling handed down by the Second Labor Judge [...] was reversed by the ruling of the First Tribunal of this Judicial District, such that we are not obliged to pay what was ordered in the referenced ruling, owing him only the sum of [...] (Bs. 67,383.00)."

15. The petitioner also claimed that the failure to pay him was due to "retaliation by the Rector of the University" for an "electoral challenge" that he had filed against the Rector at the time of his election (alleging corruption and the misappropriation of public funds) with the Attorney General, the Comptroller General, and the press. He stated that he had received threats and, concerned for his safety, moved to Spain with his family in November 2001, subsequently returning to Venezuela.⁶

16. The petitioner argued that university authorities had acted illegally by receiving the funds to pay the interest owed him in 2000 and not paying. Finally, he claimed that on May 24, 2006, the University Sector Planning Office requested an updated report from the university on the amount owed him. This report, submitted August 15, 2007, stated that the amount owed him was 85,586,545.09 bolivars, but it had not been paid. The petitioner therefore claimed that the State had broken the law by withholding payment of the interest on his social benefits, which are part of the Venezuelan State budget for the Universidad Nacional de Carabobo.

⁴ The petitioner alleged that the interest on his social benefits amounted to Bs 18,066,334.00.

⁵ The petitioner alleged that interest on his social benefits amounted to Bs 19,344,805.00.

⁶ The petitioner did not indicate the date of his return to Venezuela.

B. Position of the State

17. The State argued that the complaint was inadmissible because the petitioner had not presented facts that constituted violations of his human rights nor had he exhausted the remedies under domestic law. In terms of the facts, it maintained that the domestic courts had correctly ruled on the motions filed and that the alleged victim had filed suit for a trust payment of a sum that differed from that requested in his initial petition of 1989.⁷

18. It argued that the amparo motion filed by the university was granted by the Superior Court because *res judicata* obtained in the original proceedings and the “monetary adjustment sought (...) [...] was definitively denied, as the opposing appeal had been voided by the Supreme Court (...) and was hence enforceable.”⁸

19. The State argued that the judge had considered both the decision of December 5, 1994 and that of March 1, 1995, to have “violated the principle of legal certainty, militating against *res judicata*, and, moreover, did not guarantee to the party filing the amparo motion due time for the defense, also violating the guarantee of due process” and consequently declared

[...] the NULLIFICATION of the rulings handed down by the Court in question dated December 05, 1994, in which it agreed to the complementary judgment order, monetary adjustment, and that of March 01, 1995, where it declared that the Universidad de Carabobo was obligated to pay the definitive sum of SIX MILLION ONE HUNDRED SIXTY-ONE THOUSAND ONE HUNDRED EIGHTY FOUR BOLIVARS AND EIGHTY FOUR CENTS [...] as well as the cost of all the actions derived from these rulings⁹.

20. In this regard, it argued that the judge charged with executing the ruling had no authority to review, modify, or make pronouncements about a matter already settled. It stated, moreover, that as to the monetary adjustment and payment of the interest in trust, a negative ruling had been handed down by both the Labor Court of First Instance of the Carabobo State District Court and the Ancillary Superior Court for Civil, Mercantile, Transit, and Labor Matters; and that these rulings had acquired the force of *res judicata* due to the voiding of the appeal filed by the petitioner.

21. The State noted that the Constitutional Chamber had observed irregularities in the actions of the judge of the Second Court and therefore ordered that a copy of the ruling be forwarded to the Office of the Superintendent of Courts so that the respective inquiries could be made and an administrative review opened to establish the ultimate responsibilities in the case.

⁷ The State argued that the petitioner had requested payment in the amount of 1,026.300.50 bolivars and that the initial request had been 67,838.00 bolivars.

⁸ The State cited the April 26, 1995 judgment of the First Superior Court for Civil, Mercantile, Transit, Labor, and Children’s Affairs of the Carabobo State Judicial District. In: Sentencia de la Sala Constitucional del Tribunal Supremo de Justicia de la República Bolivariana de Venezuela de 6 de abril de 2001. Escrito del Estado AGEV-000411 recibido el 13 de septiembre de 2011. [Judgment of the Constitutional Chamber of the Supreme Tribunal of Justice of the Bolivarian Republic of Venezuela of April 6, 2001. State document AGEV-000411, received September 13, 2011].

⁹ The state cited the April 26, 1995 ruling of the First Superior Court for Civil, Mercantile, Transit, Labor, and Children’s Affairs of the District Court of the State of Carabobo. In: Sentencia de la Sala Constitucional del Tribunal Supremo de Justicia de la República Bolivariana de Venezuela de 6 de abril de 2001. Escrito del Estado AGEV-000411 recibido el 13 de septiembre de 2011. [Judgment of the Constitutional Chamber of the Supreme Tribunal of Justice of the Bolivarian Republic of Venezuela of April 6 2001. State document AGEV-000411, received September 13, 2011].

22. It argued that on September 25, 2000, the office of the Vice Rector of the university submitted a request to the Internal Comptroller's office for payment of interest in the amount of 19,934,825 bolivars on the social benefits of the alleged victim. It added that the petitioner's appeal of the of April 26, 1995 ruling on the amparo motion was denied by the Constitutional Chamber of the Supreme Tribunal of Justice, which upheld the granting of the amparo motion of April 6, 2001.

23. As to the exhaustion of domestic remedies, the State argued that the petitioner could have contested the university's decision to void the payment order through administrative channels, availing himself of the remedies of reconsideration, appeal to a higher authority, and review. It stated that even had the administrative remedies been exhausted, the petitioner could have contested these actions through a motion to reverse the administrative act, which in turn could be appealed. It argued that, in addition, he could have filed a special amparo motion contesting the appeals ruling on the Court of First Instance's decision regarding the motion to reverse the administrative decision.

24. The State furthermore argued that the petitioner should have stood as an interested third party in support of the judge against whom the university had filed an amparo motion and if this third-party action had proved to be ineffective, he should have filed an amparo motion with a higher court against the ruling on the constitutional amparo motion. It also argued that the petitioner did not urge that the ruling of the court that ordered the university to pay the interest in question be enforced and therefore, he had renounced the usual means (by not making use of it) of collecting the money that was owed him.

IV. ANALYSIS

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

25. Article 44 of the Convention authorizes the petitioner to lodge complaints on behalf of the alleged victims. The Venezuelan State ratified the American Convention on August 9, 1977; hence, the Commission has jurisdiction *ratione personae* to examine la petition. The Commission likewise has jurisdiction *ratione temporis*, as the American Convention was in force for the State on the date that the events alleged in the petition took place.

26. The Commission has jurisdiction *ratione loci*, as the alleged violations occurred within the territory of a State party to the treaty. Finally, the Commission has jurisdiction *ratione materiae*, because the petition denounces alleged violations of human rights protected by the American Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

27. Article 46.1.a) of the American Convention requires prior exhaustion of the remedies available in the domestic jurisdiction, in keeping with the generally recognized principles of international law, as a prerequisite for the admission of complaints about alleged violations of the American Convention. Article 46.2 of the Convention states that the requirement that domestic remedies be exhausted shall not be applicable when:

- a) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
- b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them, and
- c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

28. In this regard, the Inter-American Court of Human Rights has established that petitioners must only exhaust the remedies that are “sufficient” to rectify the alleged violation. It should be mentioned that these remedies must operate in the domestic legal system in a manner sufficient to protect the legal situation violated.¹⁰ Moreover, the Court has established that, depending on the burden of proof applicable to the matter, the State arguing that domestic remedies have not been exhausted must specify the domestic remedies that must be exhausted and provide evidence that they are available.¹¹

29. In the matter in question, the State argued that the petitioner had not exhausted administrative remedies. It claimed that he could have contested the university’s decision to void the payment order through the remedies of reconsideration, appeal to a higher authority, and review. It argued that even had the administrative remedies been exhausted, the petitioner could have contested these actions by means of a motion to reverse the administrative decision, which in turn could be appealed. It also maintained that he could have filed a special amparo motion contesting the appeals ruling on the Court of First Instance’s decision regarding the motion to reverse the administrative decision. Moreover, it stated that the petitioner could have stood as an interested third party in support of the judge against whom the university had filed the appeal and if the third-party action proved ineffective, he could have appealed the ruling on the constitutional amparo motion to a higher court. It furthermore argued that the petitioner did not urge that the decision of the Court that ordered the university to pay the interest in question be enforced, thereby renouncing the usual means of enforcing collection of the moneys owed him.

30. In this petition, given the alleged failure to pay the interest, the petitioner requested the courts to require execution of the transaction and trust payment plus its indexation. According to the information furnished by the parties, the First Tribunal of the Carabobo State Labor Court of First Instance considered the request inadmissible, a decision that was upheld by the Ancillary Superior Court for Civil, Mercantile, Transit, and Labor Matters. The appeal of the decision filed by the petitioner was admitted, but was voided because it was never formalized. The petitioner subsequently requested a complementary judgment order for monetary adjustment, which was issued on December 5, 1994. The university requested the Second Court to issue a clarification and explanation of the ruling and the Court declared the request unwarranted, upholding the ruling and complementary judgment order. On March 16, 1995 the university filed a constitutional amparo motion with the First Superior Court for Civil, Mercantile, Transit, and Labor Matters of the Carabobo State District Court contesting the Second Court’s decision, that motion having been declared admissible on April 26, 1995, thus overturning the Second Court’s judgment in favor of the petitioner. On April 27, 1995, the petitioner filed an appeal of the reversal with the Civil Chamber of the Supreme Court.

31. On September 25, 2000 the university processed the paperwork for payment of the interest in the amount of 19,934,826.00 bolivars on his benefits, documented in a preliminary list of the staffing liabilities of the national universities from 1975 to 1999, a sum that was never paid; therefore, between November 2000 and January 2001, the alleged victim submitted requests for payment of these moneys and sanctions against the parties who had withheld the payment to the university authorities, the National Council of Universities, and the Ministry of the Secretariat of the Office of the President of the Republic, among others. On January 25, 2001 the university responded that it

[...] has not failed to comply with any decision as Professor Páez alleges, since the ruling handed down by the Second Labor Judge [...] was reversed by the ruling of the First Tribunal of this Judicial District, such that we are not obliged to pay what was ordered in the referenced ruling, owing him only the sum of [...] (BS. 67,383.00).”

¹⁰ IACtHR, *Case of Velásquez Rodríguez*. Judgment of July 29, 1988, para. 63.

¹¹ IACHR Rules of Procedure, Article 31.3. See IACHR, Report No. 32/05, petition 642/03, Admissibility, Luis Rolando Cuscul Pivara and other persons affected by HIV/AIDS, Guatemala, March 7, 2005, paras. 33-35; IACtHR, *Case of the Mayagna Community (Sumo) Awastingni. Preliminary Objections*, para. 53; *Case of Durand and Ugarte. Preliminary Objections*. Judgment of May 28, 1999. Series C No. 50, para. 33; and *Case of Cantoral Benavides. Preliminary Objections*. Judgment of September 3, 1998. Series C No. 40, para. 31.

32. In this regard, the Commission notes that the petitioner did not file a motion for a judicial remedy to declare the alleged right (to the payment of 19,934,836.00 bolivars) derived from the aforementioned preliminary list or the alleged illegal withholding of payment.

33. The appeal of 1995 was denied on April 6, 2001, upholding the April 16, 1995 ruling handed down by the First Superior Court for Civil, Mercantile, Transit, and Labor Matters, which had concluded that the university was obliged to pay 67,383.00 bolivars in interest. The petitioner had neither requested this payment nor filed for the enforcement of that ruling, and therefore had not exhausted all domestic remedies to ensure the respective payment. Thus, the Commission deems that the petition before it does not meet the requirement established in Article 46.1.a) of the American Convention.

34. Due to the extraction of material, the Commission abstains, from examining the other requirements of admissibility established in the American Convention.¹²

V. CONCLUSIONS

35. Based on the arguments of fact and of law presented herein, the Commission deems the petition inadmissible under Article 47.a) of the American Convention, due to the failure to exhaust domestic remedies and, hence,

THE INTER-AMERICAN COMMISSION OF HUMAN RIGHTS,

DECIDES:

1. To declare inadmissible the petition in question, pursuant to Article 47.a) of the American Convention.
2. To notify the State and the petitioner of this decision.
3. To publish this decision and include it in the 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 2013. (Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Rosa María Ortiz, Second Vice-President; Felipe González, Dinah Shelton, Rodrigo Escobar Gil, Rose-Marie Antoine, Commissioners.

¹² IACHR, Report No. 135/09, Petition 291-05, Jaime Salinas Sedó (Peru), November 12, 2009; Report No. 42/09, Petition 443-03, David José Ríos Martínez (Peru), March 27, 2009; Report No. 87/05, Petition 4580/02, Ricardo Antonio Cisco Ferrer (Peru), October 24, 2005; Report No. 73/99, "Ojo de Agua" Ejido, Case 11.701 (Mexico), May 4, 1999; Report No. 24/99, Case 11.812, Ramón Hernández Berrios et al. (Mexico), March 9, 1999; and Report No. 82/98, Case 11.703, Gustavo Gómez López (Venezuela), September 28, 1998, *inter alia*.