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REPORT No. 66/14
PETITION 1180-03
REPORT ON INADMISSIBILITY

GERMÁN CRISTINO GRANADOS CABALLERO
HONDURAS

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INADMISSIBILITY
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I. SUMMARY

1. The Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition filed by Germán Cristino Granados Caballero¹ (hereinafter “the petitioner” or “the alleged victim”), on November 24, 2003, in which he alleges the international responsibility of the State of Honduras (hereinafter “Honduras,” “the State,” or “the Honduran State”) for alleged violations of rights enshrined in the American Convention on Human Rights (hereinafter “American Convention” or “Convention”) stemming from his being laid off due to the elimination of his position as Weather Forecaster III of the General Bureau of Civil Aviation, under the Secretariat of Public Works, Transport and Housing (hereinafter “SOPTRAVI”) in 2002.

2. The petition alleges the violation, by the State, of Articles 8 (judicial guarantees) and 25 (judicial protection) of the American Convention, in conjunction with its Article 1(1), due to the alleged victim having been laid off due to the elimination of his post without justification, and without following the relevant statutory and regulatory procedures. The petitioner also alleges that the Honduran State is responsible for the violation of the right to work and the right to health.

3. For its part, the State adduces that the dismissal of the petitioner due to the elimination of his position was done “fully abiding by the corresponding special legislation,” and that in the respective proceeding the petitioner’s claim was processed with respect for judicial guarantees and within a reasonable time. It also notes that the petitioner’s arguments do not refer to a matter involving a denial of justice, but rather that the result of the proceeding was not favorable to him.

4. Without prejudging on the merits, after analyzing the parties’ positions and in keeping with the requirements set out at Articles 46 and 47 of the American Convention, the Commission decides that the claim is inadmissible for failure to satisfy the requirement set out at Article 47(b) of the American Convention, since the facts alleged do not tend to establish a violation of rights guaranteed in said instrument. In addition, it decided to notify the parties of this decision, and to publish it and include it in its Annual Report to the General Assembly of the OAS.

II. PROCESSING BY THE COMMISSION

5. On November 24, 2003, the Commission received the petition and assigned it number 1180-03. On May 25, 2010, it forwarded the pertinent parts of the petition to the State, asking that it submit its response within two months, in keeping with the provisions of Article 30(2) of the IACHR’s Rules of Procedure. The State’s response was received on June 21, 2010, and sent to the petitioner on July 14, 2010. In addition, information was received from the petitioner on September 7 and 14, 2010, June 14, 2011, and January 10, 2012. Those communications were duly forwarded to the State. For its part, Honduras sent information on June 21, 2010, February 23, 2011, and September 14, 2011, which was duly sent to the petitioner.

¹ By communication of November 28, 2006, the petitioner named the Comité para la Defensa de los Derechos Humanos en Honduras (CODEH) as co-petitioner.

III. THE PARTIES' POSITIONS

A. Position of the petitioner

6. The petitioner alleges the violation by the State of the right to due process, contained in Articles 8 and 25 of the American Convention, since he said to have been laid off due to the elimination of his position "without just cause" and "without the proper application of domestic laws," from his job as Weather Forecaster III from the General Bureau of Civil Aviation, under the Secretariat of Public Works, Transport and Housing (SOPTRAVI).

7. In this respect, he notes that his lay-off due to the elimination of his position, approved by cancellation decision No. 007778 of May 15, 2002², violated his judicial guarantees, mainly those contemplated in the Civil Service Act (Ley de Servicio Civil) and its Regulation. The irregularities alleged include that he was not notified of his lay-off with one month lead time, as ordered by Article 283 of the Regulation of the Civil Service Act. In addition, he states that his dismissal due to elimination of his position failed to observe the procedure established by the Civil Service Act and its Regulation to do without the services of public servants, since the authorities had not taken into account the results of the periodic evaluations ordered by these articles, nor his years of service in the public administration. In addition, he notes that there was a refusal to receive the rights which in his view he should have been paid for having been laid off, as it was not done lawfully.

8. In addition, as regards the reasoning used by the courts to reject his claim of nullity with respect to his dismissal due to redundancy, the petitioner argues that the judicial officers improperly applied the presidential decrees on savings in the public sector, mainly because the respective decision to cancel his employment contract did not mention them. He also notes that those executive decrees – that is, PCM-011-2000 on savings in the public sector, and PCM-005-2002, on reduction in force – did not apply to his particular situation. In this respect, he notes that by decree PCM-011-2000 (Article 4) the State Secretariats were instructed to cancel the employment contracts, due to redundancy, of those employees who were receiving a monthly salary of 4,500 lempiras, yet he received a monthly salary of 5,800 lempiras. Moreover, he indicates that decree PCM-005-2002 was published in the official gazette (Diario Oficial de la República) three days after his dismissal.

9. He also states that since 1998, four years before he was laid off, he filed a claim for reassignment in order to receive a salary increase, which had not been resolved as of the date of his dismissal. This lag, in his view, also violated his rights.

10. The petitioner adduces that he exhausted all relevant domestic remedies. He indicates that after being laid off he filed a petition for nullification (*demanda de nulidad*) before the Administrative Disputes Court (Juzgado de Letras de lo Contencioso Administrativo) of the city of Tegucigalpa. As he did not receive satisfaction from this court of first instance, he filed an appeal with the Court of Appeals for Administrative Disputes (Corte de Apelaciones de lo Contencioso Administrativo) (which has jurisdiction nationally); and, finally, he filed a cassation appeal (*casación*) with the Supreme Court of Justice. He also reports that these same remedies were exhausted when his request for a salary increase was rejected in 2003, a proceeding that also ended with a final resolution by the Supreme Court of Justice rejecting his claim in 2006.

² According to Decision No. 000778, of May 15, 2007, the Secretary General of State in the Offices of Public Works, Transport and Housing decided: "To approve the movement of personnel authorized by the General Directorate of Civil Service, by official note No. 0294 of May 10, 2002, which records the dismissal due to elimination of the position of the petitioner." It appears in the record that the petitioner held this position as of August 1, 1997 (General Director of Civil Service – Presidency of the Republic. Personnel Action, Appointment of Mr. Granados Caballero as Weather Forecaster III, July 16 1997), and received a monthly salary of 5,800.00 lempiras (SOPTRAVI, Constancia, Tegucigalpa Honduras, May 9, 2002).

B. Position of the State

11. The Honduran State agrees with what was alleged by the petitioner in relation to the position he held at the time of the facts and with respect to his separation as a public employee. Nonetheless, it denies that the elimination of his position was illegal.

12. The State adduces that the separation of the petitioner due to redundancy was done “fully abiding by the corresponding special legislation”; that his labor claim was judged by impartial judges within a reasonable time; and that he had the proper judicial guarantees. It also notes that the petitioner’s arguments do not refer to a denial of justice, but rather indicate that the outcome of the proceeding was unfavorable to him.

13. As regards the exhaustion of domestic remedies, the State agrees with the petitioner with respect to the proceedings conducted domestically. In particular, it states that a petition for nullification (*demanda de nulidad*) was filed with the court (*Juzgado de Letras*), followed by an appeal to the Court of Appeals; and, finally, a cassation appeal (*casación*) before the Supreme Court of Justice. In addition, it recognizes that the petitioner exhausted the remedies available to him, but that the rulings need not necessarily have to result in a favorable outcome.

14. In summary, Honduras considers that it “has proceeded in keeping with the domestic legislation, that the petitioner has had access to justice, and that his petition was resolved in timely fashion.” In view of all the foregoing, it asks this Commission to declare the instant petition inadmissible.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

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

15. The petitioners are authorized, in principle, by Article 44 of the American Convention to file petitions with the Commission. The petition notes as alleged victims an individual person with respect to whom the State of Honduras undertook to respect and ensure the rights enshrined in the American Convention. As regards the State, the Commission notes that Honduras has been a state party to the American Convention since September 8, 1977, the date on which it deposited its instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition. The Commission is also competent *ratione loci* to take cognizance of the petition, insofar as it alleges violations of rights protected by the American Convention said to have taken place in the territory of Honduras, a state party to said treaty.

16. The Commission 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 alleged in the petition are said to have taken place. Finally, the Commission is competent *ratione materiae*, because the petition alleges possible violations of human rights protected by the American Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

17. Article 46(1)(a) of the American Convention provides that in order for a complaint filed with the Inter-American Commission pursuant to Article 44 of the Convention 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 allow the national authorities 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. This requirement is based on the nature of the mechanism of international protection as complementary to the mechanisms established by domestic law.

18. In the instant case, the Commission observes that there are two proceedings pursued by the petitioner to uphold his claims. The first is related to the claim regarding his dismissal due to redundancy; and the second, his disagreement with not being granted a salary increase to which, in his view, he had a right. In both cases the petitioner indicates that all domestic remedies were exhausted, through cassation. For its part, the State indicates that domestic remedies were exhausted and ruled on in timely fashion, but that the respective rulings did not necessarily have to be favorable to the petitioner's claims.

19. As regards the first of these processes, it appears in the record that on May 20, 2002, the petitioner filed a petition for nullification (*demanda de nulidad*) against the administrative decision No. 007-778 of May 15, 2002 –which ratified his dismissal due to redundancy on April 29, 2002– in which he was seeking his reinstatement and the payment of other benefits. This action was declared unfounded by the Administrative Disputes Court of Tegucigalpa (Juzgado de Letras de lo Contencioso Administrativo) by judgment of February 17, 2003.

20. In the face of this decision, on March 26, 2003, the petitioner filed an appeal (No. 0787-20) with the Court of Appeals for Administrative Disputes (Corte de Apelaciones de lo Contencioso Administrativo), which was rejected by judgment of April 29, 2003. Subsequently, on July 17, 2003, the petitioner filed a cassation appeal (No. 1457-2003) before the Chamber for Contentious-Administrative Labor Matters of the Supreme Court of Justice, which found this motion inadmissible by judgment of October 22, 2003.

21. As for the second of those proceedings, on August 29, 2003, the petitioner filed a petition for nullification (*demanda de nulidad*) (No. 237-29-08-03) before the Administrative Disputes Court (Juzgado de Letras de lo Contencioso Administrativo), against official note NP-334 of the General Directorate of the Civil Service, which ruled he did not have the seniority necessary to receive a wage increase. This action was declared unfounded by judgment of May 6, 2005. In response to this decision, he filed an appeal (No. 125-2005) with the the Court of Appeals for Administrative Disputes (Corte de Apelaciones de lo Contencioso Administrativo), which was dismissed by judgment of October 11, 2005. Finally, on December 9, 2005, he filed a cassation appeal with the Supreme Court of Justice, which was found inadmissible by judgment of November 17, 2006.

22. In view of these considerations, the information presented, and the State's recognition of the exhaustion of domestic remedies, the Inter-American Commission considers that this requirement, established at Article 46(1)(a) of the American Convention, has been met.

C. Time for filing the petition

23. Article 46(1)(b) of the Convention establishes that in order for a petition to be declared admissible it must be filed within six months from the date on which the interested person was notified of the final decision that exhausted domestic remedies.

24. P-639-06 was received by the Commission on November 24, 2003. Notice of the judgment of the Supreme Court of Justice that resolved the cassation appeal that ended the process of challenging the petitioner's dismissal as Weather Forecaster III of the General Bureau of Civil Aviation, was received on October 22, 2003. Accordingly, the final resolution of this process occurred within six months of the filing of the petition. The judgment on cassation related to the proceeding arising from his disagreement with the decision not to grant him a salary increase, which was handed down on December 9, 2005, subsequent to the filing of the petition.

25. Therefore, the Inter-American Commission considers that the petitioner has met the requirement established in Article 46(1)(b) of the Convention with respect to both measures.

D. Duplication of procedure and international *res judicata*

26. Article 46(1)(c) of the Convention provides that the admission of petitions is subject to the requirement that the matter “is not pending in another international proceeding for settlement” and Article 47(d) of the Convention stipulates that the Commission shall not admit a petition that substantially reproduces a previous petition or communication already examined by the Commission or other international organization. In the instant case, the parties have not argued the existence of either of those two circumstances, nor can they be deduced from the record.

2. Characterization of the facts alleged

27. For purposes of admissibility, the IACHR must decide whether the arguments set forth state facts that tend to establish 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).

28. The petitioner alleges that the Honduran State violated the rights contained at Articles 8 and 25 of the Convention, in conjunction with its Article 1(1), since he was laid off due to the elimination of his position, without justification, and without following the legal procedure established for that purpose. For its part, the State adduces that the petitioner’s dismissal on grounds of redundancy was lawful, in addition to the petitioner having been judged with proper judicial guarantees and within a reasonable time.

29. With respect to this claim, the Commission observes that in his a petition for nullification (*demanda de nulidad*), filed against the administrative act by which he was laid off, the petitioner alleged that his lay off was unlawful as various irregularities were committed that violated the Civil Service Act and its Regulation. These alleged irregularities were as follows: (a) that his position was eliminated without just cause³; (b) that he was not given one month’s notice, as required by law; and (c) that the requirements that should be taken into account for doing without the services of public servants were not met.⁴ The Administrative Disputes Court (Juzgado de Letras de lo Contencioso Administrativo), for its part, declared this action unfounded on the argument that the authority “followed the procedure established in the Civil Service Act and its regulation ... and acted in keeping with the decree of measures to stimulate savings in the public sector, No. PCM-02-2000 ... and with Executive Decree No. PCM-005-2002, referring to reduction in force.”

30. In his appeal, the petitioner reiterated the alleged irregularities and added that the decrees mentioned “were not set forth or mentioned in the notice of dismissal due to elimination of his post.” This appeal was rejected by the Court of Appeals for Administrative Disputes (Corte de Apelaciones de lo Contencioso Administrativo) based on the same arguments indicated by the court of first instance.

31. The petitioner filed a cassation appeal against this decision, in which he argued two grounds: (a) the “infraction due to improper application of the law,” regarding the improper application of the presidential decrees on savings in the public sector by the courts on which they based the rejection of his claims; and, (b) “error in fact in the weighing of the documentary evidence,” relating to the incorrect appreciation by the Court of Appeals in its finding that there was no infraction of the Civil Service Act and its Regulation in the lay-off of the complainant due to the elimination of his position. For its part, the Supreme Court of Justice found the first ground of cassation inadmissible, based on the executive decrees and executive decisions not being substantive laws; and the second ground was found inadmissible as it was considered

³ In this respect, the petitioner indicated that his dismissal without cause violated Article 212 of the Civil Service Act, which mandates that all public servants have a right not to be “dismissed without just cause.” Specifically, that provision stipulates that “every public servant has the right to permanence in his or her position and consequently cannot be transferred, downgraded, or dismissed without just cause and without observing the legally established procedure....”

⁴ In particular, the petitioner indicated in his action that these requirements are contained in Article 280 of the regulation of the Civil Service Act. This provision stipulates that “... in order to do without the services of persons affected by elimination of the post, ... one should take account of the results of: (a) the periodic evaluation of each of them; (b) the years of service in the public administration; and, (c) the condition of being the parent of a poor family with five or more minor children.”

that the petitioner had failed to cite the statutory provisions said to have been infringed, and that the regulatory provisions were not statutes.

32. As regards these arguments, which are the basis for the alleged violations of Articles 8 and 25 of the Convention, invoked before this international body, and the elements in the record of the petition, the Inter-American Commission observes that the petitioner's claims regarding his dismissal from the position that he held are aimed fundamentally at questioning the interpretation and application of the statutory and regulatory provisions on which it was based. He also considers that those decrees to promote savings in the public sector and calling for a reduction in force were not applicable to his specific case for reasons which, in the Commission's view, only involve the domestic law of the State.

33. With respect to the claim according to which his rights were violated because he was not given the salary increase he thought he deserved, it is noted that in his action brought before the Administrative Disputes Court (Juzgado de Letras de lo Contencioso Administrativo) the petitioner asked that the General Directorate of the Civil Service reassign him to his position and grant the salary increase retroactive to January 1998. In said complaint brief he claims that the increase he was due should have been of 1,260 lempiras, and not just 600 lempiras⁵; in addition, he focused on trying to show that other colleagues, similarly situated, had been granted a salary increase.

34. This action was declared unfounded as it was considered that the act challenged was lawful, for the petitioner did not show the seniority which, according to Article 186 of the Regulation of the Civil Service Act⁶, would be necessary for a public servant to have the right to a salary increase.⁷ This decision was affirmed by the Court of Appeals for Administrative Disputes (Corte de Apelaciones de lo Contencioso Administrativo), which grounded its decision in the same considerations indicated by the court of first instance.

35. In that regard, the IACHR observes that this claim is based essentially on the argument that the authorities improperly interpreted the petitioner's showing of seniority in his position, plus the fact that some of his colleagues did in fact receive greater salary increases. Accordingly, the specific matter raised before this Commission consists essentially of the petitioner's discrepancy with respect to the judicial authorities' interpretation of the provisions that regulate salary increases for public employees.

36. In view of the considerations set forth in this section, the IACHR ratifies its doctrine according to which it is not appropriate to take the place of the judicial authorities in interpreting the scope of domestic law provisions.⁸ Accordingly, in view of the complementary nature of the international protection offered by the inter-American system: "The Commission cannot take upon itself the functions of an appeals court in order to examine alleged errors of fact or law that local courts may have committed while acting within the scope of their jurisdiction, unless there is unequivocal evidence that the guarantees of due process

⁵ The General Directorate of Civil Service of the Secretariat of State in the Presidential Office, by official note of December 28, 2001, had determined at that moment that "[the petitioner] did not make a showing of seniority in the position so as to have the right to a salary increase, thus he was only authorized the step adjustment in the amount of L. 60.00...."

⁶ Article 186 of the regulation of the Civil Service Act provides that "no more than one promotion can be authorized in each 12-month period for the same Regular Employee nor may one accept the Offer of Promotion Services without showing seniority of not less than one year in the Position he or she occupies."

⁷ In this regard, the authority indicated that the petitioner came to hold his position on August 1, 1997, and the study on salary increases by the Department of Positions and Salaries was carried out in August 1997, that is, not even one month had gone by ... from the time he had assumed his position.

⁸ IACHR, Report 27/12, Petition 12,222, Inadmissibility, Unified Water and Sewer Service Workers' Union of Arequipa, Peru, March 20, 2012, para. 29; Report No. 79/10, Petition 12,119, Inadmissibility, Association Of Retired Oil Industry Workers of Peru - Metropolitan Area of Lima and Callao, Peru, July 12, 2010, paras. 41 and 42; Report No. 27/07, Petition 12,217, Inadmissibility, José Antonio Aguilar Angeletti, Peru, March 9, 2007, paras. 41 and 43, and Report No. 39/05, Petition 792-01, Inadmissibility, Carlos Iparraguirre and Luz Amada Vásquez de Iparraguirre, Peru, March 9, 2005, paras. 52 and 54.

recognized in the American Convention have been violated.”⁹ Accordingly, given the absence of elements that indicate that the respective courts’ resolutions have been adopted based on criteria that are arbitrary or contrary to rights enshrined in the American Convention, the facts raised by the petitioner do not tend to establish a violation of said international instrument.

37. In the instant case, having analyzed the parties’ positions and the facts that arise from the record, the Commission concludes that it does not have before it information that enables it to identify *prima facie* a violation of human rights protected by the American Convention on Human Rights, in the terms established in that instrument.

32. Accordingly, the IACHR concludes that the petition does not satisfy the requirement set forth in Article 47(b) of the American Convention.

V. CONCLUSIONS

33. Based on the foregoing arguments of fact and law, the Commission considers that the petition is inadmissible under Article 47(b) of the Convention since it does not state facts that tend to establish a violation of rights protected by that Convention, and, accordingly,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To find the petition under study inadmissible, as per Article 47(b) of the American Convention.
2. To notify the State and petitioner of this decision.
3. To publish this decision and 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 25th day of the month of July, 2014. (Signed): Tracy Robinson, President; Rose-Marie Belle Antoine, First Vice President; Felipe González, Second Vice President; Rosa María Ortiz, Paulo Vannuchi and James L. Cavallaro, Commissioners.

⁹ IACHR, Report No. 45/04, Petition 369-01, Inadmissibility, Luis Guillermo Bedoya de Vivanco, Peru, 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.