

OEA/Ser.L/V/II.167
Doc. 21
24 February 2018
Original: Spanish

REPORT No. 17/18
PETITION 1291-07
REPORT ON ADMISSIBILITY

EDWIN JAVIER RIVERA MARTÍNEZ
PERU

Approved by the Commission at its session No. 2115 held on February 24, 2018.
167th Special Period of Sessions.

Cite as: IACHR, Report No. 17/18. Admissibility. Edwin Javier Rivera Martínez. Peru.
February 24, 2018.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Edwin Javier Rivera Martínez and Percy Mayhuire Chávez
Alleged victim:	Edwin Javier Rivera Martínez
Respondent State:	Peru ¹
Rights invoked:	No specified articles

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	October 3, 2007
Notification of the petition to the State:	July 29, 2011
State's first response:	December 11, 2014
Additional observations from the petitioner:	September 14, 2016
Additional observations from the State:	May 11, 2017

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention on Human Rights ³ (deposit of ratification instrument on July 28, 1978)

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible	Articles 8 (Fair Trial) and 25 (Judicial Protection) of the American Convention, in connection with its Article 1.1 (obligation to respect rights)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes; May 3, 2007
Timeliness of the petition:	Yes; October 3, 2007

V. ALLEGED FACTS

1. The petitioner claims that on June 7, 2004 he was fired from RANSA Comercial S.A., the company where he had been working since 1997 on a contract for an indefinite period. He indicates that his dismissal was made through a letter notifying him of the company's decision to terminate his contract without specifying a cause, despite the constitutional rule that enshrines the right not to be dismissed from work without lawful reasons; and that, therefore, it was a wrongful dismissal. He alleges that given that his employer's groundless, unilateral decision deprived him of his right of defense, he filed an amparo complaint before the Second Civil Court of Callao in order to seek protection against his unfair dismissal, by requesting

¹ In accordance with Article 17.2.a of the IACHR Rules of Procedure, Commissioner Francisco José Eguiguren Praeli, a Peruvian national, did not participate in the discussion or the decision on this matter.

² The observations submitted by each party were duly transmitted to the opposing party.

³ Hereinafter "Convention" or "American Convention."

that the letter of employment termination be declared void and that his reinstatement be ordered. He submits that an amparo complaint was the only legal procedure that allowed him seek a reinstatement, and that after being notified of the termination of his contract, he charged only the social benefits, including holidays and bonuses, because compensation in view of the wrongful dismissal was neither recognized nor paid.

2. The petitioner claims that the amparo complaint was filed on September 15, 2004 and as it met the formal requirements, it was admitted for processing on September 23, 2004. He indicates that on February 4, 2005 the Second Civil Court of Callao ruled the amparo complaint groundless because the court considered that receiving social benefits means accepting the termination of the employment contract and thus a violation of rights could not be established. The petitioner submits that he filed an appeal before the First Civil Chamber of the Superior Court of Justice of Callao, invoking previously adopted decisions of the Constitutional Court establishing that an employment contract is terminated when the employee has been paid social benefits and compensation. He claims that in spite of this, on July 22, 2005, his appeal was rejected and the lower-instance judgment, confirmed.

3. He indicates that he challenged the court of appeal's decision by presenting a constitutional remedy which, as it met the admissibility requirements, was forwarded by the Superior Court of Callao to the Constitutional Court. However, the petitioner complains that the Constitutional Court did not analyze the constitutional remedy but proceeded to review the formal requirements of the amparo complaint, which was not under discussion. He explains that, as a result, said court wrongly concluded that the amparo complaint had been submitted beyond the established period because more than 60 days elapsed from the notification of his dismissal until the presentation before the Second Civil Court of Callao; thus, the amparo complaint was declared out of order.

4. The petitioner alleges that the analysis was mistaken because the Constitutional Court failed to consider, in accordance with the domestic legal framework, the existence of a hindrance for the filing of the amparo complaint, which was the national strike of employees of the Judiciary going from July 14 to September 10, 2004. In addition, he asserts that if this period had been disregarded under the law, the Constitutional Court would have verified that the complaint did meet the formal requirements like the court of first instance had ruled.

5. The State claims that the facts of this petition do not establish a violation of any of the rights protected by the American Convention, that this is an issue between private parties, and that, in said context, all the petitioner's legal safeguards were granted and respected in the domestic venue. It submits that labor matters are not part of the IACHR's competence. It argues that the petitioner did not exhaust the domestic remedies because by untimely filing a complaint, due to his own negligence, he prevented the State from finding a solution to his claims. It asserts that only before international bodies did the alleged victim mention the strike of the Judiciary's employees in order to justify the untimely presentation of the amparo complaint. In this regard, the State requests the Commission to declare this petition inadmissible in view of the lack of exhaustion of domestic remedies and the lack of facts establishing a violation of rights; it claims that, otherwise, the Commission would act beyond its competence, for this petition concerns a labor issue.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

6. The petitioner asserts that, as a result of his dismissal without a lawful reason, he filed an amparo complaint seeking to have the termination of his contract annulled and to be reinstated in his job, and that said complaint was rejected on the same grounds as was the appeal against said rejection. He indicates that, in the end, a constitutional remedy was lodged before the Constitutional Court, but it was not heard because the court declared the amparo complaint out of order, in view of which domestic remedies were exhausted. For its part, the State asserts that domestic remedies were not exhausted because the amparo complaint was filed out of time.

7. With regard to the issue about whether the amparo complaint was timely or untimely presented, the Commission notes that despite having dismissed the petitioner's claims on the merits, the

courts of justice that heard the amparo complaint manifestly ruled the admissibility requirements met, including the requirement of timeliness. In this regard, considering the date the contract was terminated, June 7, 2004, and the date the complaint was filed, September 15, 2004, the Commission deems reasonable to conclude that, in their analysis for the amparo complaint with the 60-day period to file the initial remedy, the lower courts took into account the time of the strike. The State refers to the Constitutional Court's decision of untimeliness but does not challenge the fact that the strike took place in the period indicated by the petitioner. In this regard, based on the available information, the strike was an event of public knowledge taken into account by the court of first instance, whose staff allegedly took part in it, as well as by the court of appeals and the Superior Court of Callao, considering the fact that the latter forwarded the constitutional remedy to the Constitutional Court. These antecedents were allegedly not considered by the latter court, which decided that the initial complaint did not meet the admissibility requirements by then duly analyzed. In view of the foregoing, the Commission believes that the petitioner exhausted all the legal remedies available domestically on May 3, 2007, when he was notified of the Constitutional Court's resolution, pursuant to Article 46.1.a of the Convention. Likewise, the petition was presented within the six-month period following said date of notification in accordance with the requirement established in Article 46.1.b of the Convention.

VII. ANALYSIS OF COLORABLE CLAIM

8. In view of the elements of fact and law filed by the petitioner and the nature of the matter brought to its attention, the IACHR finds that, if proved, the allegations concerning the violation of due process and the resulting inability to access compensation for wrongful dismissal could establish a possible violation of the rights enshrined in Articles 8 (fair trial) and 25 (judicial protection) of the American Convention, in connection with its article 1.1 (obligation to respect rights) to the detriment of Edwin Javier Rivera Martínez.

9. Finally, as to the State's claim about the establishment of a fourth instance, the Commission notes that by declaring this petition admissible it does not seek to replace the domestic authorities' competence. In fact, the Commission will analyze in the merits stage whether the domestic judicial proceedings conformed to the rights of due process and judicial protection and ensured the alleged victim's right of access to justice under the terms of the American Convention.

VIII. DECISION

1. To declare this petition admissible with regard to Articles 8 and 25 of the American Convention in accordance with its Article 1.1; and

2. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Bogotá, Colombia, on the 24th day of the month of February, 2018.
(Signed): Margarette May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.