

REPORT No. 152/10
PETITION 459-97
ADMISSIBILITY
ALFREDO LAGOS DEL CAMPO
PERU
November 1, 2010

I. SUMMARY

1. This report concerns Petition 459-97, which the Inter-American Commission on Human Rights (hereinafter, "Inter-American Commission," "Commission," or "IACHR") began processing based on a petition lodged by Mr. Alfredo Lagos del Campo (hereinafter, "the petitioner") against the Republic of Peru (hereinafter, "Peru" or "the State"). The petition was received by the IACHR on August 5, 1998, and in it the petitioner alleges that the State violated, to his detriment, its obligation to respect rights in connection with the rights to a fair trial, equality under the law, and judicial protection contained in Articles 1(1), 8, 24, and 25 of the American Convention on Human Rights (hereinafter, "American Convention").

2. The petitioner¹ alleges that on June 26, 1989, he was unjustly dismissed from the Ceper-Pirelli S.A. company, where he worked as an electrician operator in the maintenance department. The petitioner moreover alleges that on the date he was dismissed, he was acting as president of the Electoral Committee of that company's workers union. The petitioner asserts that he was dismissed because a media outlet quoted him as making statements which, in the judgment of his employers, had injured the company. The petitioner alleges that the responsible party should be the journalist who wrote the article or the media outlet that published it, since he was not the author of the text. In any case, he believes that even if it were established that he did make the statements, these would not constitute a "serious offense" warranting his dismissal since, according to the petitioner, insults or injuries may not refer to legal persons but only to natural persons who have been individually named. In addition, he believes that the statements attributed to him would be protected by the freedom of expression that shields union leaders. Finally, the petitioner maintains that the legal proceedings initiated in Peru did not respect due process guarantees.

3. The State, for its part, considers that the internal proceedings unfolded normally and that there was no violation whatsoever of the petitioner's right to due process. In addition, the State asserts that if the petitioner did not acknowledge that he had made the statements ascribed to him, he should have exercised his right of reply. The State alleged that by not doing so, the petitioner took on these statements as his own and was sanctioned in accordance with Peruvian laws.

4. The Inter-American Commission concludes that it is competent to decide on the complaint lodged by the petitioner, which it declares to be admissible in light of the provisions of Article 46 of the American Convention in regard to the alleged violations of the rights recognized in Articles 8 and 13 in conjunction with Articles 1(1) and 2 of the American Convention. The Commission also declares that the violations alleged with regard to the rights recognized in Articles 24 (equality under the law) and 25 (judicial protection) are inadmissible. The Commission thus decides to notify the parties of this decision, continue with the analysis on the merits with regard to the alleged violations of the American Convention, publish this Admissibility Report, and include it in its Annual Report to the OAS General Assembly.

¹ The IACHR received numerous submissions in which various labor unions and social organizations in Peru supported the petition lodged by Alfredo Lagos del Campo. The petitions submitted include those of the Federation of Workers of the Metallurgy Industry of Peru (FETIMP); Federation of Peruvian Light and Power Workers; Unitary Union of Employees of Electrolima and EE.CC.EE.; Federation of Plastics Workers; Federation of Textile Workers of Peru; Autonomous Confederation of Textile Workers of Peru; National Federation of Peruvian Electricity Workers; Workers Union of the Compañía Peruana de Teléfonos S.A.; National Association of Peruvian Journalists (Lima Affiliate); Federation of Municipal Employees of Peru; Federation of Employees of Empresa Nacional de Telecomunicaciones del Perú; National Federation of Paper, Chemical, and Related Workers of Peru; Confederation of Mining Communities of Peru; Lima College of Attorneys (Office of Human Rights); and General Confederation of Peruvian Workers.

II. PROCESSING BY THE COMMISSION

5. The petition was received by the office of the OAS in Peru on October 14, 1993. On October 4, 1994, the petitioner delivered a letter to the OAS office in Peru, addressed to the IACHR Chair, in which he requested that his petition be processed. The petition was received by the IACHR on August 5, 1998. The petitioner provided additional information on April 9 and December 8, 1999; on September 1, 2000; and on January 21, 2002. The relevant parts of the petition were forwarded to the State on November 11, 2002, the date on which the Commission opened a file on the case. In that communication, the IACHR asked the State to submit its observations within a period of two months. On January 15, 2003, the State requested an extension, which was granted by the IACHR for a period of 30 calendar days beginning on February 7, 2003, the date on which that communication was sent. On March 13, 2003, the State submitted observations.

6. The petitioner provided additional information on February 14 and 26, June 2, and August 21, 2003; June 9, 2005; and September 11, 2007. These communications were duly forwarded to the State.

7. The State sent additional information on April 4, 2003, and May 22, 2007.

8. On January 12, 2008, and February 17, 2009, the petitioner requested a public hearing before the IACHR; these requests were rejected by the IACHR on February 14, 2008, and March 10, 2009. In addition, on February 14, 2003, the petitioner requested precautionary measures, which were denied by the Commission on February 21, 2003.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioners

9. The petitioner indicates that, beginning in 1986, he had worked as an electrician operator in the maintenance department of the Ceper Pirelli S.A. company. The petitioner asserts that he was “unjustly and arbitrarily” dismissed on June 26, 1989. The petitioner moreover alleges that at the time of his dismissal he was acting as president of the Electoral Committee of the labor union at that company. He also asserts that the grounds cited by the company for his dismissal refer to alleged acts of “defamation and libel [against] Company directors,” based on a news report in which he is alleged to have insulted the company.

10. The petitioner asserts that as a result of his dismissal, he filed a lawsuit for “classification of dismissal” in the Fifteenth Labor Court, which ruled in his favor and found the dismissal to be unfounded. The petitioner alleges that the judgment was appealed by the Ceper Pirelli S.A. company to the Second Labor Court, which reversed the previous judgment and declared the dismissal to be well-founded. In response to that judgment, the petitioner filed an appeal for review and reconsideration, as well as an appeal to have the judgment set aside, both of which were denied.²

11. The petitioner also asserts that he filed an *amparo* action in the Fifth Civil Chamber of the Lima Superior Court (now called the Third Specialized Chamber of the Lima Superior Court), which ruled against him. He appealed to the Constitutional and Social Chamber of the Supreme Court to have the decision set aside. That court declared his lawsuit to be inadmissible, based on which the petitioner filed an appeal for review so that it could be heard by the Full Chamber of the Supreme Court, an appeal that was rejected. In 1996, the petitioner filed a special appeal petitioning the Fifth Civil Chamber of the Lima Superior Court, in view of the fact that there was now a Constitutional Court in operation in Peru and new articles of the Constitution stipulating that the last instance in which guarantee actions are settled is the Constitutional Court. That appeal was dismissed, as was the petitioner’s appeal of that decision. In August 1997, the petitioner filed an appeal against the refusal to allow the appeal (*recurso de queja*),

² Annexes to the initial submission.

which was rejected, and on February 25, 1998, he filed an appeal with the Supreme Court's Chamber of Constitutional and Social Law.

12. With regard to the alleged violation of the right to due process, the petitioner alleges that "procedural flaws and irregularities" existed in the proceeding carried out by the Second Labor Court, in the first *amparo* proceeding, and in the *recurso de queja* and the appeal seeking to have the decision set aside.³ In particular, the petitioner indicates that the Second Labor Court handled his case very quickly, without adequately analyzing his arguments. The petitioner indicates that said court had not had sufficient evidence with which to make a judgment under the law, violating the principle of conclusive evidence. The petitioner alleges as a procedural irregularity the fact that the Second Labor Court had decided his case without having his pleading before it. In this regard, the petitioner indicated that on August 2, 1991, he submitted his pleading; that on August 8, 1991, the Second Labor Court issued a judgment in his case; and that on August 9, 1991 (that is, one day after the judgment), the Court responded to his pleading document by informing the petitioner that he should "abide by" the previous day's judgment.⁴

13. With respect to the alleged violation of the petitioner's right to judicial protection, the petitioner alleges that the appeals he filed against the judgment of second instance (see above paragraph 11) were erroneously rejected. The petitioner questions the fact that the Supreme Court's Chamber of Constitutional and Social Law ruled on an appeal filed the same day "that the case was heard," which he considered to be a violation of due process and a denial of effective legal recourse.

14. In domestic jurisdiction, the petitioner denied having made the statements that were ascribed to him and based on which he was dismissed. However, in his petition to the IACHR, the petitioner limits himself to rejecting responsibility for the article and believes that, in any case, those responsible would be the journalist or the media outlet that published the alleged interview.⁵ He further indicates that even if it were proved that the statements were made by the alleged victim, this would not constitute the "serious offense" grounds warranting his dismissal,⁶ since—according to the petitioner—the insults or injuries established in Article 2.5 of the 1979 Constitution of Peru (currently Article 2.7) may not refer to legal persons, but only to natural persons who have been individually named.⁷ According to the petitioner, this would affect the legality of the judgment in which he was convicted of insults allegedly expressed against "the Directorate of the company."⁸ The petitioner likewise believes that labor leaders always make use of their freedom of opinion "with high-sounding words directed toward public opinion in defense of the rights of those they represent" without this being considered grounds for dismissal.

15. The petitioner believed that his right to due process enshrined in Article 8 of the American Convention was violated in connection with Article 14.1 of the International Covenant on Civil

³ Petitioner's submission received at the IACHR on February 14, 2003.

⁴ The ruling states: "In response to this document: abide by the judgment issued on the eighth day of the current month." Annex "6c" of the petitioner's submission received at the IACHR on August 5, 1998.

⁵ Petitioner's initial submission, received at the IACHR on August 5, 1998.

⁶ Petitioner's submission received at the IACHR on June 2, 2003. It appears from the file that the law applied to dismiss the petitioner was Article 5(h) of Law 24.514, which regulates the Right to Stability in the Workplace. That law establishes that it is a serious offense "to incur in an act of violence, serious lack of discipline, or serious offense of word causing injury to the employer, its representatives, ranking personnel, or co-workers, within the workplace; or outside the workplace, when the facts stem directly from the work relationship...."

⁷ Petitioner's submission received at the IACHR on August 5, 1998.

⁸ Petitioner's submission received at the IACHR on February 14, 2003. The article published in *La Razón* (June 1989), in which Mr. Lagos del Campo is interviewed and for which he was dismissed from his job, includes quotes attributed therein to the petitioner in which he allegedly indicates, among other considerations, that "the Directorate of the company has used and uses blackmail and coercion on the commoners, managing to pressure a particular group of workers to participate in the elections, under the threat of dismissal"... "the company management convened three members, and in the office of...management convened the elections...making a mockery of any legal provisions...." The article also attributes comments to the petitioner in which he denounces management pressure on employees, as well as an "understanding" between State institutions and the company to the detriment of the workers.

and Political Rights; the right to work; the right to equality; and the right to judicial protection.⁹ The petitioner likewise indicates that, according to Article 39 of the Amparo Law, in conjunction with Article 303 of the Constitution, his constitutional rights were violated.

B. Position of the State

16. The State alleges that the petitioner made statements to the media outlet *La Razón* in June 1989, in his capacity as President of the Industrial Commission's Electoral Committee. The State stresses that in that publication, the petitioner allegedly indicated that his employers used "blackmail and coercion" and denounced the existence of "arrangements between the company and the Directorship of the Office of General Participation of the Ministry of Industry, Tourism, and Trade." The State alleges that the petitioner had described his co-workers as "commoners subservient to the interests of the bosses." This was apparently considered injurious by his employers, who dismissed the petitioner on July 1, 1989.¹⁰

17. The State alleges that in domestic jurisdiction, during the investigation connected with the appeal filed by the Ceper-Pirelli company, in which it sought a reversal of the judgment of first instance that had found in favor of Mr. Lagos del Campo, the petitioner was questioned about the reasons he had not issued a correction letter to *La Razón* to rectify the statements that were attributed to him and that he was denying that he had made. The State reports that the petitioner responded that "I did not issue any letter to *La Razón* because I did not consider it to be injurious."¹¹ According to the State, that was evidence of the petitioner's agreement with what had been published.

18. The State argues that the petitioner's dismissal was based on Article 5(h) of Law 24.514, as determined in the judgment of the Second Labor Court, which set aside the judgment of first instance in the petitioner's favor. That law classifies the injury of an employer as a "serious offense."¹² The State indicates that the rejection of the writ of *amparo* subsequently filed by the petitioner was justified in not allowing guarantee actions against a "judicial or discretionary ruling arising from a regular proceeding."¹³

19. With respect to the alleged violation of due process, the State believes that the decision-maker has the discretion to evaluate the evidence presented by both parties and that the fact of obtaining an unfavorable judgment is not necessarily a consequence of having taken into account only the allegations made by one of the parties. The State believes, in that regard, that an unfavorable decision does not imply, *per se*, a violation of due process. The State alleges that the proceedings that unfolded in Peruvian jurisdiction were normal, that both parties had the same time frames, and that no procedural irregularities were committed. As to the petitioner's claim that his documents were accepted by the court one day after it issued judgment, this has no basis, since it had to do with pleadings filed past deadline and not documentary evidence.¹⁴

20. With respect to the alleged violation of the right to judicial protection, the State maintains that the petitioner filed appeals that were inadmissible and before authorities that did not have jurisdiction, the main reason these appeals were rejected.¹⁵

⁹ Petitioner's initial submission, received at the IACHR on August 5, 1998.

¹⁰ State observations submitted on March 13, 2003.

¹¹ State observations submitted on March 13, 2003.

¹² The law applied to dismiss the petitioner was Article 5(h) of Law 24.514, which regulates the Right to Stability in the Workplace. That law establishes that it is a serious offense "to incur in an act of violence, serious lack of discipline, or serious offense of word causing injury to the employer, its representatives, ranking personnel, or co-workers, within the workplace; or outside the workplace, when the facts stem directly from the work relationship...."

¹³ State observations submitted on March 13, 2003.

¹⁴ State observations submitted on March 13, 2003.

¹⁵ State observations submitted on March 13, 2003.

21. With respect to the violation of the right to a defense and to effective protection, the State alleges that the petitioner's claim to the effect that the court made a rushed decision and did not rigorously examine the action brought lacks any basis. The State believes that that argument is "too vague to prove" and that it is improbable that there was insufficient meticulousness in evaluating the evidence.¹⁶

IV. ANALYSIS OF ADMISSIBILITY

A. Commission's Competence *ratione personae*, *ratione materiae*, *ratione temporis*, and *ratione loci*

22. The petitioner is entitled to lodge a petition with the Commission pursuant to the provisions of Article 44 of the American Convention. The petition indicates as the alleged victim an individual for whom the State has assumed a commitment to respect and protect the rights recognized by the American Convention. In terms of the State, the Commission notes that Peru has been a State party to the Convention since July 28, 1978, the date on which it deposited its instruments of ratification. Therefore, the Commission has competence *ratione personae* to examine the petition.

23. The Commission has competence *ratione loci* to examine the petition, since the petition alleges violations of rights protected by the American Convention that took place within the territory of a State party to the Convention. The IACHR has competence *ratione temporis*, since the obligation to respect and guarantee the rights protected in the American Convention was already in effect for the State on the date on which the rights violations alleged in the petition are said to have occurred. Finally, the Commission has competence *ratione materiae* because the petition alleges violations of human rights protected by the American Convention.

B. Other Admissibility Requirements of the Petition

1. Exhaustion of Domestic Remedies

24. Article 46(1)(a) of the American Convention provides that in order for a complaint lodged with the Inter-American Commission to be admissible, remedies available under domestic law must have been attempted and exhausted, in accordance with generally recognized principles of international law. The purpose of this requirement is to allow domestic authorities to hear the alleged violation of a protected right and, if appropriate, to have the opportunity to resolve the situation before it is heard by an international body.

25. In this case, the petitioner alleges that all regular remedies available in Peruvian jurisdiction have been exhausted and that no other effective appeal is possible against the various judgments rejecting his arguments. Concretely, the appeal seeking review and reconsideration and the appeal seeking to have the judgment set aside, both filed in response to the judgment by the Second Labor Court, were rejected on August 27, 1991, and September 2, 1991, respectively. In addition, the appeal seeking to set aside the judgment that rejected the *amparo* action brought by the petitioner was rejected by the Supreme Court's Chamber of Constitutional and Social Law on March 15, 1993. On April 29, 1993, the petitioner asked that his case be examined by the Full Chamber of the Supreme Court. No decision on that petition appears in the case file. On July 26, 1996, the petitioner lodged an appeal seeking for his *amparo* action to be reopened and examined by the Constitutional Court, a petition he reiterated on January 13, 1997. On June 4, 1997, the Third Specialized Civil Chamber of the Lima Superior Court rejected his petition. On July 18, the petitioner lodged an appeal, which was rejected on July 25, 1997. On August 19, 1997, the petitioner filed a *recurso de queja*, appealing the refusal to allow the appeal, which was resolved on November 27, 1997.¹⁷

¹⁶ State observations submitted on March 13, 2003.

¹⁷ See annexes to the initial submission.

26. The State, for its part, reports that the exhaustion of domestic remedies occurred on March 30, 1993, when the Full Chamber of the Supreme Court denied the petitioner's appeal for judicial review.

27. In regard to that matter, the Commission observes that Mr. Lagos del Campo filed all the regular appeals provided for in his country's laws, with the aim of reversing the human rights violations of which he alleges he was a victim. Thus, the Commission concludes that the requirement provided for in Article 46(1)(a) of the American Convention has been met by the petitioner.

2. Filing Period

28. Pursuant to the provisions of Article 46(1) of the Convention, for a petition to be admitted, it must be lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment.

29. The Commission believes it is necessary to expressly state in the record that the petitioner first sent his petition to the IACHR through the OAS office in Peru on October 14, 1993. That office sent the petition on August 5, 1998, the date on which the IACHR took cognizance of it. In this regard, in analyzing the filing period the Commission considers the date of October 14, 1993, as the date on which the petition was lodged.

30. In this case, the last judgment contained in the case file was issued on March 15, 1993, and was handed down by the Chamber of Constitutional and Social Law of the Supreme Court of Justice. Notification of that decision was given on April 26, 1993.¹⁸ Taking into account that the petition was lodged on October 14, 1993, the Commission considers that in this case the requirement established in Article 46(1)(b) of the American Convention was met. In view of the foregoing and for the purposes of analyzing the petition's admissibility, the IACHR believes that it is not necessary to analyze the outcome of the legal actions undertaken by the petitioner from July 1996 on.

3. Duplication of Proceedings and Res Judicata

31. Article 46(1)(c) establishes that a petition's admission is subject to the matter not being "pending in another international proceeding for settlement," and Article 47(d) of the Convention states that the Commission shall not admit a petition or communication that is "substantially the same as one previously studied by the Commission or by another international organization." In the instant case, the parties have not alleged the existence of either of these inadmissibility situations, nor are they deduced from the file.

4. Characterization of the Alleged Facts

32. For the purposes of the admissibility report, the IACHR must decide at this stage of the proceedings only whether the petition relates facts which, if proved, could characterize violations of the Convention, as stipulated in Article 47(b) of the American Convention, or whether the petition is "manifestly groundless" or "obviously out of order," according to paragraph (c) of the same article. The IACHR must conduct a *prima facie* evaluation to determine whether the complaint establishes the grounds for an apparent or potential violation of a right guaranteed by the Convention, but not to establish the existence of such a violation. The examination it must perform at this time is simply a summary analysis and does not imply a prejudgment or an advance opinion on the merits of the matter.

33. It can be deduced from the information and allegations presented by the petitioner that Mr. Alfredo Lagos del Campo was dismissed from his job at the Ceper-Pirelli S.A. company for allegedly having made statements to the newspaper *La Razón* in which he was said to have used negative descriptions in referring to the company and to his co-workers. Mr. Lagos del Campo denied responsibility

¹⁸ See annex number 18 to the initial submission (*in fine*).

for these statements and alleged that they are the responsibility of the journalist who wrote the article. Finally, the petitioner alleged that even if it were to be proved that he was the author of the statements, they did not constitute legal grounds for his dismissal, given that the insults or injuries established in Article 2.5 of the 1979 Constitution of Peru (currently Article 2.7) may not refer to legal persons, but only to natural persons. He also believes that these statements would in any case be protected by the freedom of expression that shields union leaders in the context of a labor conflict.

34. On another point, the petitioner alleges that the domestic legal proceedings had multiple procedural irregularities and that the judges who heard his case did not respect the principles of impartiality and independence. The petitioner indicates specifically that the Second Labor Court received his pleading on August 2, 1991, but did not take it into account in its judgment of August 8, 1991.

35. The State, for its part, argued that the petitioner, by not having sent a letter seeking to rectify the information published by *La Razón*, took on what was published as his own.

36. With regard to violation of due process, the State argued that there were no irregularities of any kind and that an unfavorable judgment does not imply a violation of due process. In terms of the rejection of the *amparo* action and other appeals filed by the petitioner as a consequence, the State argued that such an action was not admissible against a "judicial or discretionary ruling arising from a regular proceeding."

37. The Commission believes that, taking into account the allegations and information provided by the petitioner and the State, this case could involve a violation of the petitioner's human rights. In effect, if the petitioner's allegations are proved with regard to procedural irregularities in domestic legal proceedings, these facts could constitute a violation of the provisions established in Article 8 of the American Convention, in conjunction with Article 1(1) of that international instrument.

38. Moreover, the petitioner was allegedly dismissed for having expressed certain opinions that the company in which he worked considered to be defamatory. According to what was alleged by the State itself and as it appears from the documentation in the file, the dismissal was based on Article 5(h) of Law 24.514, which classifies the injury of an employer as a "serious offense."¹⁹ Bearing in mind the petitioner's position as union leader and inter-American jurisprudence in the area of freedom of expression, the Commission believes, based on the principle of *iura novit curia*, that it is appropriate to study the merits of the case in order to identify whether the published statements for which the petitioner was dismissed were protected by Article 13 of the American Convention, that is, whether the dismissal occurred as a result of the legitimate exercise of his right to freedom of expression or whether, to the contrary, the statements fall outside the realm of protection of that right and therefore the work-related sanction imposed on him is not objectionable.

39. On another point, the Commission concludes that it does not have enough evidence to infer an alleged characterization of violations of Articles 24 and 25 of the Convention on the part of the Peruvian State.

40. Thus, in the instant case the Commission concludes that the petitioner has lodged complaints that, if they are compatible with other requirements and are proved to be true, could characterize a violation of rights protected by the American Convention, specifically those established in Articles 8 (fair trial) and 13 (freedom of thought and expression) in conjunction with Articles 1(1) (obligation to respect and guarantee rights) and 2 (obligation to adopt measures in domestic law).

V. CONCLUSIONS

¹⁹ Article 5(h) of Law 24.514, regulating the Right to Stability in the Workplace, establishes that it is a serious offense "to incur in an act of violence, serious lack of discipline, or serious offense of word causing injury to the employer, its representatives, ranking personnel, or co-workers, within the workplace; or outside the workplace, when the facts stem directly from the work relationship...."

41. The Commission concludes that it has competence to take cognizance of this case and that the petition is admissible pursuant to Articles 46 and 47 of the American Convention.

42. In light of the foregoing arguments of fact and law, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this case admissible with regard to the alleged violations of the rights recognized in Articles 8 and 13 in conjunction with Article 1(1) of the American Convention.

2. To declare inadmissible the arguments regarding the alleged characterization of violations of Articles 24 and 25.

3. To notify the parties of this decision.

4. To continue with its analysis of the merits of the case.

5. To make this report public and to publish it in its Annual Report to the OAS General Assembly.

Approved on the 1st day of the month of November, 2010. (Signed): Felipe González, President; Dinah Shelton, Second Vice-President; María Silvia Guillén, José de Jesús Orozco Henríquez and Rodrigo Escobar Gil, members of the Commission.