

REPORT N° 23/06¹
PETITION 71-03
ADMISSIBILITY
UNION OF MINISTRY OF EDUCATION WORKERS (ATramec)
EL SALVADOR
March 2, 2006

I. SUMMARY

1. On January 21, 2003, the Inter-American Commission on Human Rights (“the Commission” or “the IACHR”) received a petition from Human Rights for the Americas (*Derechos Humanos para las Americas*) (“the petitioners”) alleging that the Republic of El Salvador (“the State”) bears international responsibility for violating the human rights of the founding members of the Union of Ministry of Education Workers (*Sindicato de Trabajadores del Ministerio de Educación – ATRAMEC*) (“the alleged victims” or “ATRAMEC”) as a result of denying legal recognition to said union. The petitioners allege that the referenced acts constitute a violation of Article 8.1 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (“Protocol of San Salvador”) and of Article 25 of the American Convention on Human Rights (“the American Convention”), in conjunction with the obligations that emanate from Article 1.1 of same.

2. In regard to admissibility, the petitioners claim to have sought domestic remedy by filing a constitutional appeal of *amparo*, and to have presented their petition within a reasonable period of time. They also claim that this petition is not being examined by any other international body nor has it been ruled upon by any such body. In response, the State cites Article 47 of the American Convention in requesting the Commission to declare the petition inadmissible, claiming that it does not set out acts that would establish a violation of human rights.

3. Having examined the parties’ arguments, the Commission concludes that it is *competent* to examine the complaint filed by the petitioners and that the case is admissible under Article 46 of the American Convention. The Commission will thus notify the parties of this decision and proceed with an analysis of the merits of this case alleging violations of the American Convention. At the same time, it decides to publish this report and include it in its Annual Report to the OAS General Assembly.

II. PROCEEDINGS BEFORE THE COMMISSION

4. On January 21, 2003, the Commission received a petition from Human Rights for the Americas and assigned it number 71/03. On December 1, 2004, the IACHR transmitted the complaint to the Government of El Salvador, asking it to respond within two months. On January 31, 2005, the government submitted its response. On February 1, 2005, the Commission transmitted the State’s submission to the petitioners. On June 13, 2005, the Commission received petitioners’ response to the State’s observations, which was in turn transmitted to the State on June 27, 2005. On September 2, 2005, the State submitted additional comments regarding admissibility of the petition.

¹ In accordance with Article 17.2.a of the IACHR Rules of Procedure, Commissioner Florentín Meléndez, a national of El Salvador, did not take part in the discussion and decision making process reflected in this report.

III. POSITIONS OF THE PARTIES

A. The petitioners

5. In their initial submission, the petitioners point out that the Union of Ministry of Education Workers (ATRAMEC) came into being in 1983 and that on several occasions it requested recognition as a juristic person through both the Ministry of the Interior and the Ministry of Labor and Social Protection. Said requests were consistently denied, resulting in the organization never having more than a *de facto* existence.

6. According to the petitioners, on March 24, 2000, ATRAMEC held a General Assembly in the presence of a notary public. The men and women present declared their intention to join together in a trade union in order to defend the labor rights and economic interests of workers employed by the Ministry of Education. On April 5, 2000, Carlos Manuel Henríquez, acting as Secretary General of the union, submitted to the Ministry of Labor and Social Protection an application to have the union's statutes approved and the corresponding status of juristic person granted.

7. On April 12, 2000, the Ministry of Labor and Social Protection issued a decision denying the requests. The Ministry argued that the right to constitute a union is enjoyed exclusively by workers and employers in the private sector or autonomous institutions, and since the founders of ATRAMEC were public sector employees, their application was inadmissible. The alleged victims were notified of this decision on May 4, 2000.

8. The petitioners report that on May 5, 2000, the Secretary General of ATRAMEC filed an appeal for reversal of the decision with the Ministry of Labor. On May 8, 2000, the Ministry of Labor declared that appeal "inadmissible... as contrary to law". This decision was served on August 9, 2000.

9. On July 25, 2000, the Secretary General of ATRAMEC filed for *amparo* before the Constitutional Chamber of the Supreme Court, requesting that the April 12th decision of the Ministry of Labor and Social Protection, which denied approval of the union's statutes and the status of juristic person to ATRAMEC, be overturned. On October 17, 2000, The Constitutional Chamber agreed to hear the case, notifying the complainant on November 1, 2000. On March 5, 2001, the Constitutional Chamber issued an act of substantiation, announcing that it had sufficient evidence to rule on the merits of the case and ordering that "these proceedings be readied for judgment." The petitioners claim that between the date of this decision and the filing of their petition, one year and ten months had transpired without any final judgment being made.²

10. The petitioners claim that denial to register their statutes and grant legal recognition to the union represents a violation of the basic right to organize as enshrined in Article 8.1 of the Protocol of San Salvador. The petitioners argue that the lack of recognition of the juristic person impedes the free exercise of the right to organize a union since Salvadoran law states that "for unions constituted under this Code to legally exist, they must become a juristic person."³ The petitioners claim that domestic regulations and the actions taken by authorities are contrary to the basic principles laid out in international labor standards and safeguarded by the Protocol of San Salvador.

² The petitioners also point out that from the time they filed for appeal until the time they lodged this petition, more than two years and five months had transpired during which no final decision was made on their request for *amparo*.

³ Labor Law, Decree number 15 of June 23, 1972, Article 219.

11. In regard to exhaustion of domestic remedies, the petitioners point out that they initiated the most appropriate legal recourse to seek remedy, but that as of the date of their petition, the Supreme Court had not yet ruled on the merits of their appeal for *amparo*. The petitioners claim that this delay in the proceedings is unjustified as the period for submission of evidence was closed and the case declared ready for decision nearly two years ago, yet no decision has been forthcoming. The petitioners further point out that although legislation sets no specific time period in which a decision must be issued for such an appeal, not even the maximum periods allowed under internal procedural rules allow this much time for a final decision to be issued.⁴ The petitioners conclude that given such an unjustified delay in proceedings, they do not have to prove exhaustion of domestic remedies.

12. The petitioners claim that the same petition cannot be considered to have been examined by any other international organization or to be pending before one. They point out that On May 31, 2000, ATRAMEC brought a complaint before the Freedom of Association Committee of the International Labor Organization (ILO). According to the petitioners, said body issued Report 323 on Case No. 2085 examining denial of the status of juristic person to ATRAMEC. Nonetheless, the petitioners argue that the two cases are not one and the same for the following reasons: (i) the petitioners are different in each of the cases, indicating separate identities; (ii) before the ILO the only matter in question was denial of the status of juristic person, and the behavior of the courts was never mentioned; (iii) since El Salvador has never ratified the core ILO conventions, the aim in going before the ILO was based more on making an appeal to “ethical concerns and moral commitments” rather than on non-compliance with international obligations. The petition filed with the IACHR is, however, concerned with non-compliance with international obligations.

A. Position of the State

13. The State has not entered into debate of the facts as presented by the petitioners; neither has it made express mention of compliance with the requirements on exhaustion of domestic remedies, deadline for filing a petition or proceedings before other international bodies.

14. The State claims that the petition does not put forward facts that would tend to establish violations of the rights protected by the American Convention and the Protocol of San Salvador. It is the view of the State that the Protocol of San Salvador sets limits and restrictions on the exercise of trade union rights, and makes reference “logically to the provisions of the domestic law of each State party, and conditions the statement by saying such restrictions should safeguard, among other things, the rights and freedoms of others. It even goes further by stating that the trade union rights of the armed forces, police and other public services are subject to limitations and restrictions established by law.”

15. The State argues that it can be deduced from the constitutional norms of El Salvador that the public services provided by the Ministry of Education are essential as it is this ministry that guarantees that people can exercise their right to education. Moreover, the Ministry guides educational policy in the country.⁵ It logically follows that the continuity of the Ministry’s work is basic to consolidating a democratic society such as El Salvador.

⁴ Petitioners point out that in civil cases the maximum time allowed for issuance of a final ruling is 18 days. In cases under labor law, a ruling has to be issued no later than three days after proceedings have been closed. Rental laws stipulate that a ruling must be issued within three days of proceedings being closed. In oral hearings, a ruling must be issued as soon as the hearing during which evidence has been given is over.

⁵ Article 53 of the Constitution of the Republic of El Salvador states that: “The right to an education and culture is inherent to every human being; in consequence, it is a primary objective and duty of the state to protect, promote and disseminate this right.”

16. The State points out that, in accordance with the provisions of the Protocol of San Salvador, Salvadoran domestic law establishes that the right of workers to join together in professional associations or trade unions to protect and promote their interests “applies solely and exclusively to employers and workers in the private sector and to workers in official autonomous institutions, and only the latter have the right to become juristic persons and to be protected in the exercise of their duties.”⁶ The State considers that the limits set by its constitutional and legal norms are those very “restrictions established by law” mentioned in the Protocol of San Salvador and thus do not constitute a violation of trade union rights.

17. The State also argues that the petitioners’ appeals before the Ministry of Labor and Social Protection and the Constitutional Chamber of the Supreme Court prove that they had available and used the instances existing in the Salvadoran legal system to guarantee people’s right to a hearing and judicial protection. The State says that the petitioners always received a response to any petitions filed, but in this case the responses they got were not in their favor. The State claims that in this specific case, an appeal of *amparo*, regulated by the Law on Constitutional Procedures, was made, examined in accordance with domestic norms and, as legal argument was not on the side of the plaintiffs, declared inadmissible by the Supreme Court in June 3, 2003. The Supreme Court ruled:

The Constitution recognizes the general right to association (Article 7), namely that each and every person can freely join together with others to form collective groups. But rather than recognize a general right to form trade unions {Article 47 (1)}, it recognizes the specific right of private sector employers and workers and those working in official autonomous institutions. It is specific because it does not establish the right of every worker to join a trade union; it does so only for some, exactly as regulated in the Labor Code, specifically in Article 204 [...]

Thus, when the plaintiff and co-workers exercise their right to free association and recur to the Ministry of Labor to request, through the Minister, the status of juristic person for the Union of Ministry of Education Workers, and that request is denied, there is no infringement of their right to organize because they are persons that , given their labor situation, are not among those conferred with the right.⁷

18. On the basis of the foregoing considerations, the State requests that the Commission, in accordance with Article 47 of the American Convention, declare the petition inadmissible by virtue of it not stating facts that would tend to establish a violation of human rights.

IV. ANALYSIS OF ADMISSIBILITY

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

19. The petitioners are authorized to lodge complaints with the IACHR under Article 44 of the American Convention and Article 19.6 of the Protocol of San Salvador. The petition lists the following as alleged victims: Carlos Manuel Henríquez, Delmy Idalia Zaragoza de Valladares, Salvador

⁶ Article 47 of the Constitution of the Republic of El Salvador states that:

Private sector employers and workers, with no distinction due to nationality, sex, race, creed or political leanings, whatever their activity or the nature of their work, have the right to join together freely in professional associations or unions to protect their interests. Those working for official autonomous institutions shall have the same right.

⁷ Supreme Court, Constitutional Chamber, decision of June 3, 2003 in constitutional *amparo* case No. 434-2000 filed by Carlos Manuel Henríquez.

Alfonso Guillén, Carlos Alberto Larín Avilés, Elías de Jesús Rivera Espinoza, Jorge Alberto Valencia Laínez, José Alfonso Martínez García, Luís Alberto Salguero Ramírez, Mario Pérez Ramírez, Samuel Elías Bermúdez, Fátima Yeseny Pineda Ramos, Francisco Morán, Jorge Alberto Zúñiga Landaverde, Saúl Orellana García, Carlos Armando Ramírez, Ada Norma Cruz Quezada, José Ignacio Santos, Elías Velásquez Martínez, Amilcar Humberto Larín Muñoz, Mauricio Bernal Cárcamo, Omar Aguillón, José Adolfo Pérez, María Rebeca Pérez de Tobar, Rufino Saavedra Escamilla, Mario Ramírez Berríos, Juan Alfredo Ramos, David Ernesto Méndez Julio Adalberto Cardona, Juan Antonio Ayala Abarca, José Alfonso Barrera Quintanilla, Rafael Antonio Rosales, Camilo Hernández Alfaro, Manuel Horacio Escalante, Guillermo Antonio Córdova, Manuel Álvaro Vides, Margarito Martínez, José Antonio Ortiz, José Hernán Toledo Contreras, Manuel Humberto Cerna, Juan Bautista Hernández, Manuel Darío González, Ana Ruth Granados and Ana Julia Regalado Ascencio, all of whom are natural persons whose rights, as enshrined in the American Convention, El Salvador is committed to respecting and protecting. As for the State, the Commission points to the fact that El Salvador has been a party to the American Convention since it deposited its instrument of ratification on June 23, 1978. El Salvador has also been a party to the Protocol of San Salvador since June 6, 1995. It follows from the above that the Commission is competent *ratione personae* to examine the petition.

20. The Commission is competent *ratione materiae* as the petitioners allege violations of rights protected by the American Convention, which, if proven, could constitute violations of Articles 1.1 and 25 of the Convention. Petitioners also allege violations of Article 8.1.a of the Protocol of San Salvador, for which the IACHR is also competent under the provisions of Article 19 of the same.

21. The Commission is competent *ratione loci* since the alleged violations occurred within the territory of a State party to the American Convention. The Commission is competent *ratione temporis* since the State was under the obligation to respect and protect the rights enshrined in the American Convention at the time of the alleged violations.

B. Other Admissibility Requirements

1. Exhaustion of Domestic Remedies

22. Article 46.1 of the American Convention establishes that for a complaint to be admissible, remedies available under domestic law must have previously been exhausted. The petitioners state that they filed an appeal of *amparo* on July 25, 2000 and that when they filed their international petition (January 21, 2003), they still did not have a final decision, in spite of the fact that the case had been declared closed and ready for judgment for more than 1 year and 10 months. The State argues that a final ruling on the appeal of *amparo* was issued on June 3, 2003. In consequence, the Commission deems that the Supreme Court ruling of June 3, 2003, represented exhaustion of domestic remedies and that the requirements of Article 46.1 of the American Convention have been satisfied.

2. Timeliness of the Petition

23. Article 46.1.b of the American Convention establishes that a petition must be lodged within six months of the date on which the petitioners were notified of the final judgment that exhausts domestic remedies. The petition was received by the Commission on January 21, 2003 and a decision in the final domestic court case was issued on June 3, 2003, while the petition was being processed by the Commission. Thus the Commission considers that the requirements of Article 46.1.b of the Convention have been satisfied.

3. Duplication of Proceedings and *Res Judicata*

24. The Commission considers that the subject of the petition is not pending in another international proceeding, and that the petition is not substantially the same as one previously studied by the Commission or by another international organization. The Commission has taken note of the fact that before the complaint under consideration was received, the Freedom of Association Committee of the ILO examined a complaint lodged by the Union of Ministry of Education Workers (ATRAMEC). Therefore it will be necessary to examine possible duplication of proceedings and/or international *res judicata*.

25. The Inter-American Court has maintained that:

The phrase “substantially the same” signifies that there should be identity between the cases. In order for this identity to exist, the presence of three elements is necessary, these are: that the parties are the same, that the object of the action is the same and that the legal grounds are identical. In the instant case there is no duplication of proceedings.⁸

26. For its part, the Commission has held that for duplication or *res judicata* to exist, a petition must be under consideration or have been ruled upon by an international organization with the competence to make decisions on the specific facts described in the petition and to impose measures capable of effectively resolving the dispute.⁹ In the past the Commission has made reference to certain international proceedings that it did not consider as possessing such attributes, and which it thus did not consider to be duplications.¹⁰ The Commission, however, has ruled petitions inadmissible when they have been previously filed before the UNHRC, whose competence is similar to that of the Commission and thus does generate duplication as referred to in Articles 46.1.c and 47.d of the American Convention.¹¹

27. The Commission has repeatedly indicated that the recommendations made by the ILO Committee on Freedom of Association “does not entail any binding effect, either pecuniary or restorative, or indemnitory”¹² and, therefore, they are not lead to an effective settlement. Thus the Commission sees no reason why it should not examine and rule on the petition, in accordance with Articles 46.1.c and 47.d of the Convention.

4. Colorable Claim

28. At this stage of the proceedings, it is not up to the Commission to decide whether the provisions of the American Convention were transgressed or not. To decide on admissibility, the IACHR need only decide whether the facts, if proven, would tend to establish violations of the Convention, in accordance with Article 47.b of the Convention, and whether the petition is “manifestly groundless or obviously out of order,” as stipulated in Article 47.c.

⁸ I/A Court H.R., *Baena Ricardo et al. Case. Preliminary Objections*. Judgment of November 18, 1999. Series C No. 61, para. 53.

⁹ IACHR, Report 89/05 (Inadmissibility), Case 12.103, Cecilia Rosa Nuñez Chipana, Venezuela, para. 37.

¹⁰ IACHR, Report 22/05 (Admissibility), Case 12.170, Johan Alexis Ortiz, Venezuela, para. 49 and Report 30/99, Case 11.026, César Chaparro Nivia and Vladimir Hincapié Galeano, Colombia, March 11, 1999, paras. 25 and 26.

¹¹ See, for example, IACHR Resolution 33/88, Case 9786 (Peru), in OAS/Ser.L/V/II.76, doc. 10, September 18, 1989, preambular paras. d-h; and Report 96/98 (Inadmissibility), Case No. 11.827, Peter Blaine, Jamaica, December 17, 1998, para. 42.

¹² CIDH, Report 14/97 (Admissibility), Case 11.381, Milton García Fajardo, Nicaragua, March 12, 1997, para. 47.

29. The criteria needed to judge these questions are different from those needed to decide on the merits of a case. The IACHR must carry out a *prima facie* evaluation to determine whether the complaint builds an argument supporting an apparent or possible violation of any right protected under the Convention, but it needs not determine whether such a violation actually occurred. At this time only a summary analysis, which neither prejudices the merits nor foreshadows any opinion on them, is called for. The Commission's Rules of Procedure clearly distinguish between procedures on admissibility and procedures on the merits, and in doing so clearly state what the Commission must do to decide that a petition is admissible and what it must do to decide that a violation actually occurred.

30. It is the Commission's opinion that the State's arguments to the effect that no violations of union rights or of judicial protection occurred do not constitute arguments against admissibility showing the petition to be manifestly groundless or obviously out of order. The State's arguments will be taken into consideration by the Commission during its examination of the merits.

31. The Commission notes that the petition poses significant questions regarding freedom of association, especially regarding the right of workers to organize and join organizations of their choice and what restrictions on this right are permissible in a democratic State. The Commission does not deem manifestly groundless the arguments put forth by the petitioners in regard to possible violation of Article 8.1 of the Protocol of San Salvador and of Article 25 of the American Convention, in conjunction with Article 1.1 of the same.

32. Moreover, by virtue of *iura novit curia* and considering that the alleged unjustified delay in the *amparo* appeal proceedings could tend to establish a violation of the right that every person has to a hearing before a court of law within a reasonable period of time, the IACHR also admits the case in regard to an alleged violation of Article 8 of the American Convention.

V. CONCLUSIONS

33. The Commission concludes that the case is admissible, and that it has the competence to examine the complaint lodged by the petitioners in regard to alleged violation of Articles 1, 8 and 25 of the American Convention and of Article 8 of the Protocol of San Salvador.

34. On the basis of the findings of fact and law set forth above, and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present petition admissible, with respect to Articles 8 and 25 of the American Convention, in relation to the obligations established in Article 1.1 thereof, and to Article 8 of the San Salvador Protocol.
2. To transmit this Report to the parties.
3. To continue with the analysis of the merits of the case.
4. To publish this Report and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Washington, D.C., on the 2nd day of the month of March, 2006. (Signed): Evelio Fernández Arévalos, President; Paulo Sérgio Pinheiro, First Vice-President; Clare K. Roberts, Freddy Gutiérrez Trejo, Paolo G. Carozza and Víctor E. Abramovich, Commissioners.