

OEA/Ser.L/V/II.162  
Doc. 72  
25 May 2017  
Original: Spanish

**REPORT No. 61/17**  
**PETITION 282-05**  
REPORT ON ADMISSIBILITY

REINA ISABEL HERRARTE MOLINA AND OTHERS  
GUATEMALA

Approved by the Commission at its session No. 2085 held on May 25, 2017  
162<sup>nd</sup> Extraordinary Period of Sessions

**Cite as:** IACHR, Report No. 61/17. Petition 282-05. Admissibility. Reina Isabel Herrarte Molina and Others. Guatemala. May 25, 2017.

**REPORT No. 61/17**

**PETITION 282-05**

REPORT ON ADMISSIBILITY

REINA ISABEL HERRARTE MOLINA AND OTHERS

GUATEMALA

MAY 25, 2017

**I. SUMMARY**

1. The Inter-American Commission on Human Rights (hereinafter “the Commission,” “the Inter-American Commission,” or “the IACHR”) received on June 24, 1998, a petition filed by the Center for Legal Action on Human Rights (CALDH by its Spanish acronym) (hereinafter “the petitioners”), representing Reina Isabel Herrarte Molina de Chajón, Imperio Marisol Flores Suárez de Rodas, Reyna Judith Rodríguez Peña de Jerez, Francisco de Jesús Morales Carranza, José Luis Enrique Pinzón de León, María Elsa Fernández Porras and María de los Ángeles Coronado Villatoro (hereinafter “the alleged victims”). The petition was filed against the State of Guatemala (hereinafter “the State” or “the Guatemalan State”), for the allegedly illegal dismissal of the alleged victims from the Guatemalan Institute of Social Security (hereinafter “the IGSS”); for the violation of the alleged victims’ rights to a fair trial and to judicial protection; and for the absence of a legal framework and of legal procedures that might have allowed them to defend themselves.

2. The petitioners allege that the State of Guatemala is responsible for violations of the rights enshrined in Articles 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”), in accordance with the general obligations established in Articles 1.1 and 2 of said international instrument, to the detriment of the alleged victims. The State says that due process was granted in the legal proceedings pursued by the petitioners and that the fact that rulings in those proceedings were contrary to the outcome desired by the petitioners does not mean there have been violations of the American Convention. The State therefore requests that the petition be declared inadmissible.

3. Having examined the positions of the parties, in compliance with the requirements set out in Articles 46 and 47 of the American Convention and without prejudging the merits of the complaint, the Commission has decided to declare the case admissible for the purposes of examining the claims concerning alleged violations of the rights enshrined in Articles 8 and 25 of the Convention, in accordance with Articles 1.1 and 2 of said Convention, with respect to the alleged victims. The Commission has further decided to notify the parties of this decision, to publish it, and to include it in its Annual Report to the General Assembly of the Organization of American States.

**II. PROCEDURE BEFORE THE COMMISSION**

4. The IACHR received the petition on June 24, 1998. Following initial assessment of the petition, the IACHR requested additional information from the petitioners on November 5, 1998. The petitioners submitted additional information on August 9 and August 30, 1999; October 24, 2001; March 26, 2003; and March 16, 2005. On August 16, 2005, the IACHR recorded the petition with the number 282-05 and forwarded the relevant extracts to the State, requesting that a response be submitted within two months in accordance with the provisions of Article 30.2 of the Rules that were in force at the time. The State’s response was received on October 25, 2005. That submission was duly forwarded to the petitioners.

5. The IACHR received additional information from the petitioners on February 3, 2006, and October 12, 2007. The Commission further received information from the State on December 1, 2005; March 22, 2006; and December 21, 2007. Those submissions were duly forwarded to the opposing party. The petitioners requested information about the status of the petition on August 30, 2013; September 10, 2014; and June 15, 2016. The IACHR issued responses to those requests.

### III. POSITION OF THE PARTIES

#### A. Position of the petitioners

6. The petitioners note that the seven alleged victims were employees of the Guatemalan Institute of Social Security. Reina Isabel Herrarte Molina de Chajón, an IBM machine operator, started her employment relationship on July 1, 1976; Imperio Marisol Flores Suárez de Rodas, administrative officer III at the Department for Disabilities, Ageing and Survival, started her employment relationship on May 4, 1989; Reyna Judith Rodríguez Peña de Jerez, administrative assistant I at the correspondence, archives and microfilm section of the Polyclinic, started her employment relationship on July 1, 1976; Francisco de Jesús Morales Carranza, class II inspector in the incident and review section, started his employment relationship on September 18, 1972; José Luis Enrique Pinzón de León, a general doctor at the assistance unit in Amatitlán, started his employment relationship on May 29, 1978; María Elsa Fernández Porras, administrative assistant I at the Polyclinic, started her employment relationship on July 1, 1970; and María de los Ángeles Coronado Villatoro, an administrative aide in charge of the payroll at the Department for Disabilities, Ageing and Survival, started her employment relationship on December 11, 1978.

7. The petitioners report that, towards the end of January 1991, an unspecified number of IGSS employees decided to set up a group that called itself “Emergency Committee”, with the aim of requesting wage increases. Given the failure in negotiations, that group of employees decided to collectively desert their duties from January 31, 1991. The petitioners claim that the employees involved in the strike shut the gates of access to all IGSS units, although many other employees did manage to enter their offices to fulfil their duties, as was later established in the Judicial Recognition Record. They claim that the alleged victims never took part in the strike. The petitioners further state that they do not question whether or not the strike was legal, but note that the alleged victims did not take part in it.

8. The petitioners note that, on February 4, 1991, the IGSS filed a motion to have the strike declared illegal (hereinafter “the illegality motion” or “the motion”) before the Third Court for Labor and Social Security, regarding the strike carried out by a “group of employees,” without specifying who the alleged striking workers were individually. The petitioners report that the illegality motion was followed by a five-day period for the submission of evidence and that, on April 8, 1991, the Fourth Court for Labor and Social Security declared the motion admissible. The resolution was ratified by the First Court of the Court of Appeals for Labor and Social Security, in its ruling of April 11, 1991, which set a 20-day period for the employer to terminate the contracts of the workers who took part in the strike, in accordance with Article 244 of the Labor Code.

9. The petitioners report that, throughout the process, the names of the workers who took part in the strike were never established. They were identified as a “group of workers.” The petitioners note that, since the alleged victims were not identified and were therefore also not summoned, they did not know of the proceedings and they did not have the opportunity to defend themselves and submit evidence on the motion. They further note that the resolution of April 11, 1991, did not specify for which employees the termination of the contract was authorized.

10. They state that the IGSS singled out two men before the Labor Court, Víctor Alvarado and René Ovalle, as members of the group that took part in the strike, attaching as proof a press report that mentioned only one of them. The petitioners claim that the Court took those events as true, summoned those men in connection with the motion, and those men filed appeals individually to refute the charges against them. The petitioners further claim that never over the course of proceedings on the motion was it established that those men represented the group that took part in the strike.

11. The petitioners argue that, in April 25 and 29, 1991, the management of the IGSS dismissed the alleged victims through “Agreements for the Termination of Duties.” They report that a series of writs of amparo accumulated against those dismissals and that, on July 27, 1991, the Second Court of the Court of Appeals declared them inadmissible, since they were filed based on the Labor and Social Security Judge’s resolution regarding the illegality motion. The Constitutional Court confirmed that sentence on December 11,

1991. According to the petitioners, the Constitutional Court did not review the evidence to establish whether or not the alleged victims had taken part in the strike. Rather, the petitioners allege that the Constitutional Court simply ruled that the dismissal agreements were made in compliance with the motion, although the Guatemalan Institute of Social Security had admitted that there were employees who worked during the strike.

12. The petitioners note that, on August 12, 1993, the alleged victims filed an ordinary labor suit for dismissal review, and that, on June 14, 1996, the First Court for Labor and Social Security examined the issue and ruled that the complaint was inadmissible. According to the petitioners, the court did not examine the evidence that the alleged victims submitted to prove that they were working at the time of the strike. The petitioners note that, on May 26, 1997, the Second Court of the Court of Appeals confirmed the ruling without examining the evidence. The alleged victims filed a writ of amparo against such refusals, but it was rejected by the Supreme Court on October 12, 1997. The alleged victims filed an appeal against that sentence, which was rejected on November 7, 1997, for having been filed outside the stipulated period. They then filed a *de facto* appeal before the Constitutional Court, which was rejected on December 19, 1997; the alleged victims were notified of that decision on December 29, 1997.

13. According to the petitioners, the courts interpreted Article 244 of the Labor Code as saying that employers did not need to prove, before dismissal, that the alleged victims took part in the strike, and also that it was not necessary to grant them a hearing to establish their participation. According to the petitioners, the employer has, in the opinion of the courts, the absolute right to dismiss any person they believe has taken part in a strike. The petitioners allege that there is no mechanism or requirement within the law that establishes the need to prove employee involvement in a strike. They further note that the Labor Code does not hold any remedies that allow the alleged victims to appeal their dismissals.

14. The petitioners note that, based on the aforementioned events, the State violated the rights enshrined in Articles 8 and 25 of the American Convention, in accordance with Articles 1.1 and 2 of said instrument, by denying the alleged victims due process during domestic remedies, since the alleged victims were never heard and the evidence they filed to prove that they did not take part in the strike was never examined.

15. Regarding the exhaustion of domestic remedies, the petitioners note that the alleged victims did not produce evidence during proceedings on the motion to have the strike declared illegal because, given that they did not take part in the strike, they did not know it was applicable to them. Further, the alleged victims were not notified of the rulings issued by the Court of Appeals in proceedings regarding that motion, and they only found out that the motion concerned them when they received the Agreements for the Termination of Duties in late April 1991.

16. The petitioners further note that, since they filed the petition, they made several attempts to obtain copies of judicial records. The authorities posed many difficulties for the petitioners to gain access to those records. The petitioners note that it was only in 2007 that they gained access to the records of the illegality motion.

17. The petitioners further note that, when the alleged victims looked for other jobs in both the public and private sectors, they got negative references from the IGSS which prevented them from working. This again allegedly affected their right to work.

## **B. Position of the State**

18. The State requests that the petition be declared inadmissible, because it deems that the events it concerns do not constitute violations of rights enshrined in the American Convention.

19. The State claims that the IGSS complied with due process in the dismissal of the alleged victims, who took part in a strike that a court declared illegal. The State notes that the participation of the alleged victims in the strike was proved in administrative records examined in the proceedings and in the

Judicial Recognition Record issued by the Third Judge for Labor and Social Security. In a tour of IGSS working areas, the judge established the absence of staff from their positions and saw employees who were sitting on their desks and not working. The State further notes that the IGSS drafted records and lists of staff who were indeed working, and that the names of the alleged victims in this case were not on those records and lists. The IGSS consequently went on to cancel its employment relationship with the employees who took part in the strike.

20. The State notes that both the IGSS and the courts acted in compliance with the domestic legal system. It further notes that the IGSS showed it acted in good faith by granting dismissed employees their full benefits and compensation although their dismissals were justified.

21. Regarding the exhaustion of domestic remedies, the data that the State has provided match the information that the petitioners have put forward with respect to the appeals that the alleged victims filed domestically. However, the State disputes the claim that the alleged victims were not allowed to present evidence in the proceedings. The State notes that the alleged victims were granted the right to a defense and had the opportunity to present evidence and refute their employer's arguments during proceedings on the motion to have the strike declared illegal. The State further notes that the alleged victims had access to all the domestic remedies provided by Guatemalan laws, both ordinary and extraordinary. According to the State, the fact that the alleged victims' appeals were rejected does not mean that they were not granted due process. The State therefore notes that the events mentioned do not constitute violations of the alleged victims' constitutional rights to be heard and to have access to effective remedies.

#### **IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY**

##### **A. Competence**

22. Under Article 44 of the American Convention, the petitioners are entitled to file petitions before the Commission. In the petition, the alleged victims are individuals whose rights under the American Convention the Guatemalan State agreed to respect and guarantee. As for the State, Guatemala has been a State party to the American Convention since May 25, 1978, when it deposited its instrument of ratification. The Commission is therefore competent *ratione personae* to examine the petition. In addition, the Commission is competent *ratione loci* to hear the petition, in that it alleges violations of rights protected in the American Convention said to have occurred within the territory of Guatemala, a state party to said treaty.

23. The Commission is competent *ratione temporis* in that the obligation to respect and guarantee the rights protected in the American Convention was already in effect for the State on the date the events alleged in the petition are said to have occurred. Finally, the Commission is competent *ratione materiae*, given that the petition alleges possible violations of rights protected under the American Convention.

##### **B. Admissibility requirements**

###### **1. Exhaustion of domestic remedies**

24. Under Article 46.1(a) of the American Convention, for complaints over the alleged violation of said Convention to be admissible, domestic remedies must have been pursued and exhausted, in accordance with generally recognized principles of international law. That requirement is intended to give the domestic authorities the opportunity to examine an alleged violation of a protected right and, if appropriate, resolve the matter before it is brought to the attention of an international body.

25. In this case, there is no dispute regarding the exhaustion of domestic remedies. The petitioners note that they exhausted all remedies, while the State argues that the alleged victims had access to all the remedies that domestic laws provide, both ordinary and extraordinary.

26. Indeed, the IACHR notes that, in April 1991, the IGSS filed an illegality motion against the strike carried out by a group of its employees. On April 8, 1991, the Fourth Court for Labor declared the motion admissible, and the First Court of the Court of Appeals confirmed that ruling on April 11, 1991. The alleged victims were dismissed by the IGSS. They filed a series of writs of amparo against those decisions, but the writs of amparo were accumulated and declared inadmissible by the Second Court of the Court of Appeals on July 27, 1991. The Constitutional Court confirmed that decision on December 11, 1991.

27. The alleged victims further filed an ordinary labor suit for dismissal review before the First Court for Labor and Social Security and, on June 14, 1996, the court ruled that the complaint was inadmissible. This ruling was confirmed on May 26, 1997, by the Second Court of the Court of Appeals for Labor and Social Security. The alleged victims then filed a writ of amparo that the Supreme Court of Justice rejected on October 12, 1997. The alleged victims further filed an appeal against that sentence, which was rejected by the Supreme Court of Justice on November 7, 1997. They then filed a *de facto* appeal before the Constitutional Court, which rejected it on December 19, 1997. The Commission notes that the Supreme Court rejected the appeal for having been filed a few hours outside the stipulated period, and that the petitioners challenged the time frame as inconsistent with legal provisions. If that is deemed relevant, it is an issue that the Commission could consider in the merits stage.

28. The Commission therefore concludes that, in this case, domestic remedies have been pursued and exhausted in accordance with Article 46.1 of the American Convention.

## **2. Timeliness of the petition**

29. Article 46.1(b) of the American Convention provides that, for a petition to be admissible, it must be presented within six months of the date on which the party alleging violation of rights was notified of the final judgment.

30. According to the present complaint, the decision by the Constitutional Court was notified on December 29, 1997, and the petition to the IACHR was filed on June 24, 1998. In view of this, the Commission finds that this petition meets the requirement set forth in Article 46.1(b) of the American Convention.

## **3. Duplication of proceedings and international *res judicata***

31. There is nothing in the record to suggest that the subject matter of the petition is pending for settlement in other international proceedings or that it is substantially the same as one previously studied by this or any other international organization. Therefore, the causes for inadmissibility set forth in Articles 46.1(c) and 47(d) of the Convention do not apply.

## **4. Colorable claim**

32. For the purposes of admissibility, the IACHR must decide, pursuant to Article 47(b) of the American Convention, whether the facts alleged, if proven, would tend to establish a violation of rights, or, pursuant to paragraph (c) of the same article, whether the petition is “manifestly groundless” or “obviously out of order.” The standard by which admissibility is assessed is different from the one needed to decide the merits of a petition, since the Commission must only perform a *prima facie* evaluation to determine whether the petition provides grounds for an apparent or potential violation of a right enshrined in the American Convention. This examination is a general analysis that does not imply a prejudgment or a preliminary opinion on the merits of the matter.

33. Furthermore, neither the American Convention nor the Rules of Procedure of the IACHR require that the petition identify the specific rights allegedly violated by the State in a matter submitted to the Commission, though the petitioners may do so. It is for the Commission, based on the system's jurisprudence, to determine in its admissibility report which provisions of the relevant Inter-American instruments are applicable and could be found to have been violated if the alleged facts are sufficiently proven.

34. The petitioners argue that the State violated the alleged victims' rights to a fair trial and to judicial protection, by not giving them the opportunity to defend themselves in proceedings on the motion to declare the strike illegal that led to their illegal dismissals and, later, by the absence of regulations and legal proceedings that might have allowed them to defend themselves. The State argues that the participation of the alleged victims in the strike has been proved and that the petition is inadmissible because the events it concerns do not constitute a violation of rights enshrined in the American Convention.

35. In that regard, the IACHR notes that, as stated in the case file, the Supreme Court of Justice said in its ruling of October 12, 1997, that the employees should have proved they did not take part in the strike during proceedings on the motion to declare the strike illegal. However, the petitioners have claimed that the alleged victims had no knowledge of such proceedings and were neither represented in them nor notified of their occurrence, since the individuals involved in the strike were never identified. In this sense, the petitioners allege that termination agreements were issued arbitrarily, allegedly without giving the petitioners the right to defend themselves.

36. The petitioners further allege that the courts that examined the labor complaint for dismissal review did not assess the substance of the claims filed by the alleged victims. Such courts allegedly noted only that the termination of employment contracts was not arbitrary since it was based on a court order (issued on April 8, 1991, by the Fourth Judge for Labor and Social Security) that ruled admissible the motion to declare the strike illegal. In this respect, the alleged victims argue that there is no legal framework to prevent employees from indiscriminate dismissal once a strike is declared illegal.

37. Regarding the alleged victims' possible participation in the strike, the IACHR cannot replace the judges in the assessment of the evidence. However, the alleged non participation in proceedings on the motion, the alleged absence of a requirement in the law to establish the need to prove employees' involvement in a strike, and the alleged absence of adequate judicial remedies to appeal dismissal are elements that the IACHR could examine in the merits stage without acting as a court of fourth instance.

38. Given the factual and legal elements presented by the parties and the matter put before the Commission for consideration, the IACHR believes that, if proved, the petitioners' claims may tend to establish a possible violation of the rights enshrined in Articles 8 and 25 of the American Convention, in accordance with Articles 1.1 and 2 of said Convention, to the detriment of the alleged victims.

## **V. CONCLUSIONS**

39. On the basis of the foregoing considerations of fact and of law, the Inter-American Commission concludes that the present petition satisfies the admissibility requirements set forth in articles 46 and 47 of the American Convention and, without prejudging the merits of the matter,

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

#### **DECIDES:**

1. To declare this petition admissible with regard to Articles 8 and 25 of the American Convention, in accordance with Articles 1.1 and 2 of said Convention;
2. to notify the parties of the present decision;
3. to continue examining the merits of the case; and
4. to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights in the city of Buenos Aires, Argentina, on the 25 day of the month of May, 2017. (Signed): Francisco José Eguiguren, President; Margarete May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, James L. Cavallaro, and Luis Ernesto Vargas Silva, Commissioners.