

OEA/Ser.L/V/II.
Doc. 24
13 March 2020
Original: Spanish

REPORT No. 17/20
PETITION 1263-09
REPORT ON INADMISSIBILITY

JAIME RAYMOND AGUILERA AND OTHERS
BOLIVIA

Approved electronically by the Commission on March 13, 2020.

Cite as: IACHR, Report No. 17/20, Petition 1263-09. Inadmissibility. Jaime Raymond Aguilera and others. Bolivia. March 13, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Isidro Vásquez Mazuelos and Jeffrey M. Kihien Palza
Alleged victim:	Jaime Raymond Aguilera and others ¹
Respondent State:	Bolivia
Rights invoked:	Articles 1 (obligation to respect rights), 8 (right to a fair trial), 24 (right to equal protection) and 25 (right to judicial protection) of the American Convention on Human Rights ² ; Article 7.d (just, equitable, and satisfactory conditions of work) of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ³ ; Article XIV (right to work and to fair remuneration) of the American Declaration of the Rights and Duties of Man ⁴ ; and other international treaties ⁵

II. PROCEEDINGS BEFORE THE IACHR⁶

Filing of the petition:	October 8, 2009
Additional information received at the stage of initial review:	October 26, 2009; April 15 and 29 and August 4, 2010; May 3, 2011; October 28, 2014; December 21, 2015 and May 20, 2016
Notification of the petition to the State:	November 30, 2016
State's first response:	February 28, 2017
Additional observations from the petitioner:	June 5 and 9, August 4 and December 26, 2017; January 10, March 22 and April 4 and 20, 2018; and March 11 and September 13, 2019
Additional observations from the State:	December 6, 2017 and March 14, 2019

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 (deposit of instrument of ratification made on July 19, 1979)

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	None
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, October 19, 1981
Timeliness of the petition:	No

V. FACTS ALLEGED

1. The petitioner requests that the Bolivian State be held internationally responsible for the alleged violation of judicial protection and judicial guarantees to the detriment of 24 alleged victims of Chilean nationality, for failure to comply with the judgment on labor matters issued by the Chilean Supreme Court of

¹ The petition refers to 24 alleged victims, individually identified in the annexed document.

² Hereinafter "the Convention" or "the American Convention".

³ Hereinafter "the Protocol" or "the Protocol of San Salvador".

⁴ Hereinafter "the Declaration" or "the American Declaration".

⁵ Artículo 2 of the Declaration of Social Rights; and Article 23.1 of the Universal Declaration of Human Rights.

⁶ The observations submitted by each party were duly transmitted to the opposing party.

Justice on October 19, 1981. Said judgment awarded payment of the alleged victims' labor benefits as a consequence of their unlawful dismissal from the Autonomous Administration of Customs Warehouses of Bolivia (hereinafter "AADAA"), a Bolivian State-owned company.

2. The petitioners argue that the alleged victims had performed their duties for the AADAA in the ports of Arica and Antofagasta in Chile until they were unlawfully dismissed. They indicate that the alleged victims filed a labor lawsuit in 1979 before the Labor Court of Arica to obtain recognition of payment of their benefits, on the ground that the AADAA had failed to acknowledge their status as workers due to the lack of a contract. They state that on December 27, 1980, the First Labor Court of Arica issued a ruling recognizing the employment relationship between the workers and the employer and the duty to compensate a number of benefits and rights that had not been recognized in previous years. They add that this ruling was appealed by the AADAA Superintendent in Arica before the Court of Appeals in Iquique, which reversed the previous decision and rejected the alleged victims' claims on March 24, 1981.

3. Faced with this situation, the workers filed a complaint with the Supreme Court of Justice. On October 19, 1981 the Supreme Court annulled the ruling of the Court of Appeals of Iquique and upheld the original decision adopted on December 27, 1980. However, they describe that in December 1982 –14 months after the adoption of the judgment and despite the adverse decision— the Deputy Consul of Bolivia and Superintendent of AADAA in Arica requested a declinatory plea. The petitioners argue that the State of Bolivia had appeared in the process, by virtue of which it had exercised its right to defense and accepted Chilean jurisdiction from the beginning of the labor process.

4. The petitioners indicate that, upon the execution of the Supreme Court's judgment through a judicial seizure of assets, the Bolivian State closed the AADAA and transferred its assets to the Bolivian consulates in Arica and Antofagasta, in order to benefit from jurisdictional immunity. In this respect, the petitioners argue that the workers and the Bolivian State had initiated negotiations with the Chilean State under which the Bolivian State –by Ministerial Resolution No. 55-92 of January 22, 1992,⁷ issued by the Bolivian Ministry of Finance— acknowledged and agreed to pay a sum of money. However, shortly after the negotiations, it refused to pay and adopted Ministerial Resolution No. 133-92 published on March 16 of the same year, which left the previous Ministerial Resolution without effect.

5. The petitioners also allege that they attempted to have the judgments of the Supreme Court of Chile recognized by Bolivian courts; however, requests for exequatur were rejected on grounds they considered political and discriminatory without complying with due process and judicial guarantees, by invoking a violation of Bolivian sovereignty and jurisdiction. They indicate that the letters rogatory in Chile were processed in compliance with all required formalities according to existing laws and that their execution is in accordance with Bolivian legislation. In this regard, they point out that the judicial authorities of the Bolivian State failed to consider that the judgment was accepted and executed, and that said State was not in default. After the decision of the Bolivian Supreme Court, the petitioners maintain that the State failed to provide them with any solution and simply closed their access to judicial protection.

6. The petitioners explain that, despite the above, they have submitted letters to various Bolivian and Chilean authorities, including the Presidents of both countries, the Ministers of Foreign Affairs and the President of the Chilean Senate. Likewise, they refer to the various steps taken by the Chilean State to resolve the conflict amicably within the framework of the conferences of the Political Consultation Mechanism between Chile and Bolivia, as well as statements that are recorded in the Minutes of the Meetings of Bilateral Political Consultations between Chile and Bolivia. They also allude to other diplomatic efforts in which the Bolivian State would have recognized in 1998, 2003, and finally in July 2009 an outstanding debt with the AADAA workers. They consider that throughout all the years of negotiations, the alleged victims had believed in the good faith

⁷ The petitioners stress that in the text of this Resolution, Bolivia acknowledged that although "[...] it does not recognize the jurisdiction of the Chilean Courts, under the provisions of the Peace Treaty of 1904, of the Free Transit Convention of 1937 and the Declaration of Arica of 1953, at the time, the AADAA appeared before Chilean justice by appealing the judgments of the Courts of Arica and Antofagasta before the Superior Court of Iquique in 1981, thereby implicitly recognizing its jurisdiction and competence."

of the State, and therefore they also deny that their petition fails to comply with timeliness for submission. They maintain that to date no payment has been made to the alleged victims.

7. The petitioners maintain that all available remedies have been exhausted.⁸ They argue that because the AADAA operated on Chilean territory, and the alleged victims are Chilean nationals residing in Chile, employment relations are governed by the labor laws of the place of employment, unless the parties have expressly waived Chilean jurisdiction. In this regard, they argue that in addition to having tacitly accepted the jurisdiction of the Chilean courts during the labor proceedings and that the decisions are strictly in accordance with due process, the treaties invoked by the State in order to disregard its obligations in relation to the present case are inapplicable in labor matters.

8. For its part, the State emphasizes that the factual claims fail to characterize a violation of the rights established in the Convention, or in the Protocol of San Salvador, inasmuch as neither the IACHR nor the Court has jurisdiction to examine this petition. The State maintains that the Commission is not competent *ratione materiae* by virtue of the limitation of jurisdiction established by Article 19.6 of the Protocol itself. It also argues that by virtue of the principle of non-retroactivity, the IACHR can only hear complaints regarding facts that occurred after the Protocol of San Salvador entered into force. The Protocol entered into force on November 16, 1999, and Bolivia ratified it on October 5, 2006; but to date the State of Chile has not ratified it.

9. The State argues that the 24 former workers of the AADAA in Arica and Antofagasta lodged two similar suits, at different times and before judicial authorities of different jurisdictions, which finally coincided in the procedure of the request for exequatur of foreign judgments before Bolivian authorities. It alleges that the labor proceedings were conducted before the judicial authorities of Arica and Antofagasta, and therefore it is inappropriate for the State to comment on the remedies available in that jurisdiction. It maintains that the labor proceedings before the court in Arica were irregular in that it failed to take into account the legal instruments signed between Bolivia and Chile. The State indicates how, in December 1982, after the trial, the Deputy Consul of Bolivia and Superintendent of AADAA appeared in the proceedings and requested a statement of refusal. It also indicates that the ordinary labor claim against AADAA was filed in Antofagasta on August 28, 1981, for benefits accrued during years of unpaid service. It points out that AADAA "Trade Factor" requested a dismissal of the claims and that on January 10, 1983, the Fourth Court Judge issued his ruling in which he upheld the claims and found the state-owned company liable to pay the benefits. The judgment was confirmed on March 23, 1983.

10. The State further argues that on November 7, 1989, at the request of the workers, both the First Court of Appeals—in connection with the lawsuit in Arica— and the Court of Appeals of Antofagasta issued letters rogatory requesting the corresponding Court of Appeals in Bolivia to serve the final judgment that was executed, and that the corresponding procedures were carried out. However, the Supreme Court of Justice, as the only competent body to hear and determine the request for homologation of foreign judgments, issued Supreme Orders Nos. 61 and 62 on October 4, 1993, denying recognition of the foreign judgments after the representatives of the Executive Director of the AADAA requested in each letter rogatory, the rejection of application, and the submission of a legal opinion by the Attorney General of the Republic in both cases. The State maintains that in both cases the Supreme Court of Bolivia considered that the applicants failed to comply with the current regulations related to homologation on the grounds of an usurpation of Bolivian jurisdiction against a public institution of the State; the lack of standing of the attorney as the identity of the plaintiffs was not specified; the lack of legalization of the power-of-attorney granted abroad; the fact that the power-of-attorney of the legal representative failed to meet the necessary requirements to be considered authentic; the failure to serve the legal representatives of AADAA; the violation of Bolivian sovereignty, order and public law; and the lack of jurisdiction of the Chilean courts to hear matters in which the Bolivian State is sued according to Article 333 of the Bustamante Code.

⁸ The petitioners also describe that the State recognized the exhaustion of all legal and diplomatic instances in the text of ministerial resolution No. 55/92. Regarding the possibility of filing an administrative claim to demand compliance with Ministerial Resolution No. 55-92, the petitioners consider that it is absurd taking into account the considerable time required to pursue this legal remedy, the lack of financial resources, their advanced age, as well as the pronouncement of the Supreme Court of Justice in connection with this case.

11. The State argues that it granted the possibility of enforcing foreign judgments subject to compliance with the requirements established by law. In this context, the State considers there was no violation of the right to judicial protection since, in accordance with regulations in force at the time, the petitioners were granted the effective means to execute a foreign judgment. With regard to the Ministerial Resolution No. 233/92, the State alleges that the petitioners could have resorted to the administrative proceedings if they considered it harmful to their interests and, once exhausted, they could have resorted to a contentious administrative process. Likewise, the State indicates that the petitioners waited 16 years from the issuance of Supreme Orders No. 61 and No. 62 by the Supreme Court of Justice despite the fact that they were notified on October 28, 1993, and therefore that cannot be considered a reasonable period of time.

12. It maintains that Chile granted Bolivia the right to establish customs agencies in the ports of Arica and Antofagasta, under the Treaty of Peace and Friendship signed in 1904 between Chile and Bolivia. Likewise, it details that the State of Chile, through the Arica Declaration signed in 1953, acknowledged that matters of any nature relating to the cargo of Bolivia can only be known by the Bolivian authorities without the administrative authorities of Chile having or exercising jurisdiction or competence. The State indicates that while the AADAA was constituted on June 30, 1965 as a specialized authority of public law with its own legal status and financial economic autonomy for the physical handling and custody of Bolivian goods in transit, by Supreme Decree No. 24434 of December 12, 1996, AADAA was dissolved and the current Administration of Port Services-Bolivia (hereinafter "ASP-B") was created as a decentralized non-profit public entity with administrative, technical and financial management autonomy with its own legal personality and assets.

13. The State argues that it granted the means to enable the execution and enforcement of the judgments issued by the judicial authorities of Arica and Antofagasta; however, a failure to comply with Bolivian regulations, as well as with the Bustamante Code, resulted in the rejection of the homologation of the foreign judgments. It alleges that the petitioners misinterpret Article 14 of the American Declaration by forcing an argument on its relationship with the object of this complaint and ignore the Commission's inability to examine issues related to the principles established in the International Charter of Social Guarantees, as well as the Mechanism for Political Consultations between Bolivia and Chile. It considers the petition inadmissible since the petitioners intend to use, in a discretionary manner, the Inter-American human rights system as body to domestic resolutions.

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

14. The Commission notes that the facts of this case include but are not limited to the alleged lack of execution by the Bolivian State of the judgments issued by the Chilean courts regarding the payment of labor benefits to 24 former AADAA workers. For its part, the State does not rebut these facts but argues the availability of an administrative remedies and, if those remedies are exhausted, the contentious administrative process in relation to Ministerial Resolution No. 233/92.

15. The Commission has held that the requirement of exhaustion of domestic remedies does not mean that the alleged victims have an obligation to exhaust all available remedies. Consequently, if the alleged victim raised the issue through one of the valid and adequate alternatives according to the domestic legal system, and the State had the opportunity to remedy the issue in its jurisdiction, the purpose of the international standard is fulfilled. The Commission observes that, in view of the particular elements of this case, the alleged victims have raised the central issues through different labor lawsuits before the Examining Courts of Arica and before the Minor Examining Courts of Antofagasta, and through the complaint procedure. In this regard, the Commission notes that, according to the information available, the alleged victims requested the recognition of the Chilean courts' judgments in order to ensure their enforcement, which led to the issuance of the respective letters rogatory from the Supreme Court of Chile to the Supreme Court of Justice of Bolivia. However, on October 4, 1993, the Plenary Chamber of the Supreme Court of Justice issued Supreme Orders No. 61 and 62, rejecting the request for recognition of the foreign judgments concerning the alleged victims. The Commission believes that issue under its consideration was presented before domestic courts through the remedy that could have been suitable and effective to resolve this type of situation at the domestic level.

Therefore, it concludes that the adequate domestic remedies were exhausted with this decision, in compliance with the requirement established in Article 46.1.a of the Convention.

16. The State has alleged the untimeliness of the petition. On this point, the Commission notes that, according to the petitioners' allegations and not disputed by the State, the Ministry of Foreign Affairs of Chile, by virtue of communications with the alleged victims, incorporated the issue to directly address compliance with the judgment with the Foreign Ministry of Bolivia in the framework of the meetings of the Political Consultation Mechanism between Bolivia and Chile since May 15, 1998; and in that context, the Ministerial Resolution 55/92 (later revoked) was adopted and the judgment of the Supreme Court of the Republic of Chile was recognized as executed.

17. However, the Commission reiterates that the last judicial decision within the framework of the actions attempted for the execution of the sentence issued by the First Labor Court of Arica on December 27, 1980, confirmed by the Supreme Court of Justice of Chile on October 19, 1981, and the sentence of the Fourth Court of Antofagasta on January 10, 1983, were Supreme Orders No. 61 and No. 62 issued by the Supreme Court of Justice of Bolivia, notified on October 28, 1993. Given that the petition before the IACHR was received on October 8, 2009, the Commission concludes that it fails to comply with the six-month period established in Article 46.1.b of the Convention, and therefore it is not necessary to proceed with an analysis of the other admissibility requirements.

VIII. DECISION

1. To find the instant petition inadmissible; and
2. To notify the parties of this decision; and 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 on the 13th day of the month of March, 2020. (Signed): Joel Hernández, President; Flávia Piovesan, Second Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Margarete May Macaulay, Julissa Mantilla Falcón, and Stuardo Ralón Orellana, Commissioners.