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REPORT No. 382/20

PETITION 1323-09

INADMISSIBILITY REPORT

WORKERS OF THE PANAMA CANAL AUTHORITY
PANAMA

Approved electronically by the Commission on December 12, 2020.

Cite as: IACHR, Report No. 382/20. Inadmissibility. Employees of the Panama Canal Authority. Panama. December 12, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Panama Area Metal Trades Council B ¹
Alleged victim:	Panama Canal Employees
Respondent State:	Panama ²
Rights invoked:	Article 25 (judicial protection) of the American Convention on Human Rights ³ ; Article 8.1.b (trade union rights) of the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights ⁴ ; Article XVIII of the American Declaration of the Rights and Duties of Man ⁵ ; and other international treaties ⁶

II. PROCESSING BEFORE THE IACHR⁷

Filing of the petition	October 26, 2009
Notification of the petition	October 25, 2016
State's first response	February 9, 2017
Additional observations from the petitioner	July 1, 2020
Additional observations from the State	December 27, 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 of Human Rights (deposit of the instrument of ratification made on June 22, 1978)

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

Duplication of procedures and International <i>res judicata</i> :	Yes, in the terms of section VI
Rights declared admissible	None
Exhaustion of domestic remedies or applicability of an exception to the rule:	Not applicable.
Timeliness of the petition:	Not applicable.

V. FACTS ALLEGED

1. The petition arises from the alleged lack of protection of workers of the Panama Canal Authority as a result of the publication by the Legislative Assembly of Law 19 of June 11, 1997 which governs the administration of the Panama Canal. In particular, the petitioner argues that this law is contrary to the Panamanian Constitution and various international treaties insofar as it stipulates a prohibition of the right to strike; and claims that judicial protection against the acts of the legislative body has not been guaranteed.

¹ The Committee notes that, according to the petition, this union forms, together with two other unions - the Union of the Panama Canal and the Caribbean and the National Maritime Union, the exclusive representation of the workers' bargaining unit of non-professionals of the Panama Canal Authority.

² In accordance with the provisions of Article 17.2.a of the Commission's Regulations, Commissioner Esmeralda Arosemena de Troitino, a Panamanian national, did not participate in the debate or in the decision of this matter.

³ Hereinafter "the American Convention" or "the Convention."

⁴ Hereinafter "Protocol of San Salvador".

⁵ Hereinafter "Declaration" or "American Declaration".

⁶ Article 45.c of the Charter of the Organization of American States and Article 27 of the Charter of Social Guarantees.

⁷ The observations of each party were duly forwarded to the opposing party.

2. The petitioner indicates that on December 27, 2001, the National Confederation of Independent Trade Union Unity (hereinafter "CONUSI") filed a claim of unconstitutionality before the Supreme Court of Justice against various articles and expressions of this Law. Within this framework, the CONUSI alleged that the aforementioned Law does not develop essential aspects of the special labor regime applicable to the workers or officials of the Panama Canal by referring said task to the Board of Directors of the Panama Canal Authority so that they be regulated through regulations; it prevents the application of any other law that establishes constitutional rights generally established in favor of workers such as salaries, bonuses, jurisdictions or procedures; and it specifically prevents the right to strike. In this regard, the petitioner indicates that CONUSI argued that the legal vacuum generated by Law 19 cannot be filled by other regulations.

3. The petitioner states that, during the processing of the claim, the Office of the Attorney General presented its opinion suggesting the declaration of unconstitutionality of the articles with respect to the prohibition of the right to strike. However, the Constitutional Chamber of the Supreme Court issued its ruling on April 27, 2009 declaring the constitutionality of all articles. Specifically, the Supreme Court considered that the right to strike could be subject to limitations within the framework of the public service and essential services in which the work of the Panama Canal employees would be included as an essential international public service as a result of the commitment acquired by the Republic of Panama in the Treaty Concerning the Neutrality of the Permanent and the Torrijos-Carter Treaties. Thus, the Court added that, in view of the prohibition of the right to strike, the legislator provided the workers of this institution with impartial and prompt compensatory guarantees.

4. With respect to the State's argument regarding the alleged international *lis pendens* and duplication, the petitioning party maintains that the State has not demonstrated that the present petition meets the requirements established for it to be declared inadmissible. In this regard, it maintains that in relation to the alleged international *lis pendens* related to complaint 3106 under examination before the Committee on Freedom of Association of the International Labor Organization (hereinafter "the ILO"), the State intends to argue that the complaint presented in 2014 is prior to this petition due to the fact that the latter was notified in 2016 and according to its interpretation of Article 30 of the IACHR Rules of Procedure, that would be the beginning of the petition. The petitioner argues, however, that it is a capricious interpretation insofar as the article does not establish starting terms but rather the procedure followed by the Commission and they consider that the petition before the IACHR was presented previously. It also emphasizes that the ILO did not resolve the matter as it was dismissed due to lack of additional information from the complainant organizations. In particular, regarding the analysis of the identity of the elements, the petitioner alleges that the State's analysis is different from the jurisprudence of the IACHR on the reproduction of substances. The petitioner agrees with the State that the identity of the victims coincides, insofar as they are the workers of the Panama Canal, but emphasizes that the petitioners are different⁸ which would break the triple identity. The petitioner maintains that there is no identity in the object since the facts in the case before the ILO refer to the denial of the right to strike and the application of the fundamental guarantees granted in exchange for the right to strike, while the present petition does not mention or argue the fundamental guarantees. Finally, the petitioner argues that there is no similarity between the legal bases used, which in the case of the complaint to the ILO refer to ILO Conventions 87 and 98 ratified by Panama.

5. Likewise, in view of the alleged duplication of processes in this petition with case 13.649 pending before the IACHR, the petitioner also argues that, although there is a commonality between the State and the alleged victims, the petitioners are different. In this regard, the petitioner highlights that in the aforementioned case, the petitioners are the Trade Union Organization of Canaleros Employees and the Union of Captains and Officials of the Panama Canal, which are trade union groups with the right to present petitions before the IACHR without this being grounds for inadmissibility. Regarding the identity of the object, the petitioner alleges that the current petition only argues as a violation the ruling of the Supreme Court of Justice that prohibits the right to strike even when the Public Prosecutor's Office issued an opinion on its unconstitutionality and maintains that the Articles 92, 109.7 and 113.5 of Law 19 of 1997 prevent workers and

⁸ The petitioner argues that the complainants in complaint 3106 to the ILO are trade union organizations represented by the International Federation of Transport Workers, in particular the Union of Captains and Deck Officers, the Union of Panama Canal Pilots, the Union of Marine Engineers and the Union of the Panama Canal and the Caribbean.

trade union organizations from exercising the right to strike with consequences of dismissal for the former and loss of certification to represent the latter; while case 13.649, according to admissibility report No. 88/18, argues several facts, among them, that: i) Law 19 deprives workers of economic benefits, thereby excluding Canal workers from receiving the bonus payment; ii) the unjustified delay of the Supreme Court of Justice in resolving the claim of unconstitutionality against the aforementioned law; iii) the silence of the same court in relation to the same claim; iv) the State has led to the violation of the Protocol of San Salvador by allowing the Court to confirm the prohibition of the right to strike; and v) the inefficiency of the compensatory guarantees. Finally, the petitioner clarifies that the legal basis is different insofar as the case in substance links Articles 1, 2, 2, 8, 24, 25, and 26 of the American Convention and Article 8 of the Protocol of San Salvador, meanwhile the legal basis for this petition rests on Article 25 of the Convention, XVIII of the Declaration, 8 of the Protocol of San Salvador, 45.C of the OAS Charter and 27 of the American Charter of Social Guarantees.

6. For its part, the State alleges that Law No. 19 and a Constitutional Title called The Panama Canal were approved after extensive discussion with all sectors of the nation as a result of the commitments acquired under the Panama Canal Treaty (hereinafter “Torrijos-Carter Treaty”) and the Treaty concerning the Permanent Neutrality of the Canal (hereinafter “Neutrality Treatment”) as special regulations within the legal system to implement a state entity to take over the Canal. It alleges that the purpose of this Law is intended to provide the entity with general regulations for its organization, operation and modernization. In this sense, the prohibition of the right to strike in the Panama Canal is due to a decision of the people confirmed by the three branches of the State and contains compensatory guarantees for Canal workers, among others, the system of freedom of information, the rights of trade union organizations to maintain affiliation with international organizations, the right to the procedure for handling complaints and arbitration, collective bargaining procedures and the creation of an independent body to resolve labor disputes such as the Labor Relations Board.

7. It argues that the alleged victims, together with the National Maritime Union and the Panama and Caribbean Canal union, make up the exclusive representative of the Non-Professional Workers' Negotiating Unit which, according to Law 19, must promote the Canal operation efficiency. The State adds that the petitioning party has not exhausted domestic remedies, inasmuch as the alleged victims in this petition did not participate directly or indirectly in the constitutionality action filed by CONUSI, and in this sense, they have not claimed illegality, unconstitutionality or violation of their rights. It alleges that it is evident that there was no violation of the right to justice or judicial protection as the petitioners did not act before the Supreme Court of Justice to exercise any right related to any judicial action. It describes that the lack of judicial action by them should not be interpreted as a violation of the aforementioned rights since they had methods to protect their right without any cause or impediment to do so. Additionally, it argues that the right to strike in accordance with the Protocol of San Salvador is subject to limitations and in this case, they are contained in a norm that comes from the constitution itself and international treaties.

8. The State argues the inadmissibility of the present petition insofar as the matter has already been examined and resolved by an international organization and, in addition, substantially reproduces a previous petition that is currently being examined by the Commission. In this regard, the State maintains that the ILO Committee on Freedom of Association analyzed the complaint regarding the prohibition of strikes in the Panama Canal filed against the State of Panama on August 10 and November 20, 2014 by the Union of Captains and Deck Officers, the Union of Panama Canal Pilots, the Union of Marine Engineers and the Union of the Panama and Caribbean Canal. It alleges that the process before the ILO does not constitute a general examination of the situation of the right to strike in Panama, but consisted in the analysis of the specific situation of the workers of the Panama Canal in relation to the prohibition contained in the organic law of the Panama Canal Authority. In this sense, it maintains that the present petition before the Commission was transmitted seven years after its presentation, when the ILO was already examining the aforementioned complaint filed by the same complainants. It emphasizes that this delay is of fundamental importance for the purpose of determining non-compliance with Article 46.1.c of the American Convention, since the date of commencement of the individual petitions process is determined by the date of transfer to the State in accordance with the content of Article 30 of the Rules of procedure of the IACHR and therefore the petition constitutes a surviving event that modified compliance with the requirement contemplated in Article 47.d of the American Convention.

9. It argues that there is a coincidence between the parties of the present petition and the case examined by the ILO to the extent the Panamanian State is signaled as responsible, the workers of the Panama Canal are the alleged victims, and, in both cases, the petitioners are union workers of the Panama Canal Authority. Likewise, it argues that both procedures claim the international responsibility of the State because the content of Article 92 of Law 19 indicates the prohibition of strikes in the Canal, with an identity occurring in the object. Finally, it points out that the petition refers to the right to strike, alleging the violation of the Protocol of San Salvador, the OAS Charter and the Charter of Social Guarantees, while the complaint before the ILO indicates the prohibition of strikes for workers of the Canal without ensuring sufficient compensatory guarantees in breach of the principles set forth in Conventions No. 87 on freedom of association and right of association and No. 98 on the right to collective bargaining. It maintains that, although Convention No. 87 does not textually develop the right to strike, the Committee on Freedom of Association has indicated that the right to strike is an inseparable corollary of the right to organize protected by said Convention.

10. Likewise, in relation to the duplication of this petition, the State argues that the Commission issued Report No. 88/18, which determined the admissibility of the petition, which is currently in the merits stage under No. 13,649. It also points out that the admissibility process of the referenced case, the then petition 1077-07, began on November 13, 2007, that is, 9 years before the communication made to the State regarding this petition. In this regard, it identifies that in both petitions there is a coincidence between the parties to the process, the facts and the alleged rights violated. In particular, it states that the Panama Canal workers are presented as alleged victims and, for their part, both cases have Canal workers unions as petitioners that, at the time of the corresponding complaints, were part of the same negotiating unit for non-professional workers of the Panama Canal. It refers that in both processes, the alleged facts refer to the prohibition of the strike in the Panama Canal and the alleged unjustified delay of the Supreme Court of Justice to resolve the unconstitutionality appeal filed against said prohibition. Finally, it highlights that in both cases the petitioners indicated that the facts constitute a violation of Article XVIII of the Declaration, Article 25 of the Convention and Article 8 of the Protocol of San Salvador. Regarding the possibility of an accumulation of the present petition and the case, it indicates that the procedural opportunity has precluded insofar as this prerogative would only have been possible in the initial analysis stage of the procedure of both petitions.

VI. COMPETENCE

11. The Commission recalls that, in order for it to be considered that there is duplication in a case or international *res judicata*, in addition to the identity of the subjects, object and claim, it is required that the petition be considered, or has been decided, by an international body that has competence to adopt decisions on the specific facts contained in the petition, and measures aimed at the effective resolution of the dispute in question⁹. In this regard, the Commission notes that the State raises the inadmissibility of this petition since it was examined by the ILO Committee on Freedom of Association. In this regard, the Commission has indicated that it should not be inhibited when the procedure followed before the other organization is limited to examining the general human rights situation in a State, and there is no decision on the specific facts that are the subject of the petition submitted to the Commission or that does not lead to an effective settlement of the violation denounced. For the purposes of this case, the Commission observes that the recommendations of this international mechanism do not have a binding legal effect, neither pecuniary-restitutive, nor of a compensatory nature¹⁰ and its pronouncements do not refer to the eventual violation of other rights that are beyond the competence of that body, and over which the organs of the Inter-American System do have competence¹¹. Consequently, the Inter-American Commission considers that the litigation before the ILO Committee on Freedom of Association does not prevent the admissibility of this petition.

⁹ IACHR, Report No. 67/15, Petition 211-07. Admissibility. Jorge Marcial Tzompaxtle Tecpile and others. Mexico. October 27, 2015, para. 3. 4; and IACHR, Report No. 45/14, Petition 325-00. Admissibility. Rufino Jorge Almeida. Argentina. July 18, 2014, para. 51-54; I / A Court HR. Mendoza et al. V. Argentina. Preliminary Objections Merits, Reparations and Costs. Judgment of May 14, 2013. Series C no. 260, paras. 37-40; I / A Court HR, Case of Baena Ricardo et al. V. Panama. Preliminary Exceptions. Judgment of November 18, 1999. Series C No. 61, para. 53; and I / A Court HR, Durand and Ugarte Case, Preliminary Objections, Judgment of May 28, 1999. Series C No. 50, para. 43.

¹⁰ IACHR, Report No. 49/17, Petition 384-08. Admissibility. Ecopetrol Dismissed Workers. Colombia. May 25, 2017, para. 15.

¹¹ IACHR, Report No. 41/16, Petition 142-04. Admissibility. José Tomás Tenorio Morales and others (Union of Higher Education Professionals "Ervin Abarca Jiménez" of the National University of Engineering). Nicaragua. September 11, 2016, para. 53.

12. On the other hand, the Commission also observes that the State alleges the inadmissibility of the present petition insofar as there is a duplication due to *lis pendens* between it and case 13,649 pending processing before the this Commission. In this regard, the Commission emphasizes that the fact that a communication involves the same person as in a previous petition constitutes only an element of duplication. It is also necessary to examine the nature of the complaints filed and the facts adduced as the basis for them. The presentation of new facts and / or sufficiently different complaints about the same person¹².

13. In light of the foregoing, the Commission observes that the petitioning party and the State agree that, in both proceedings, the Panama Canal workers appear as alleged victims and the Panamanian State as the alleged perpetrator. Regarding the duplicity of the facts, the Commission observes that case No. 13,649 was admitted, among others, due to the alleged prohibition of the right to strike and the restriction in the application of any other legal or constitutional provision that includes salaries, bonuses, jurisdictions or procedures in favor of the alleged victims, both established in Law 19 of June 11, 1997, as well as the alleged unjustified judicial delays in the unconstitutionality process that examined the referred regulations; allegations that coincide with the main purpose of this petition. Furthermore, the Commission observes that, in both proceedings, violations are alleged related to Articles 8, 24, 25 and 26 of the American Convention and Article 8 of the Protocol of San Salvador.

14. Regarding the allegations of violations of Article 8.1.b of the Protocol of San Salvador, the IACHR recalls that the jurisdiction provided in the terms of Article 19.6 of said treaty to establish violations in the context of an individual case is limited to the Articles 8.1.a and 13. Likewise, with respect to the alleged violations of other international treaties, the Commission reiterates that it does not have competence to declare violations of rights enshrined in these instruments, without prejudice to the fact that it may resort to the standards established therein to interpret the norms of the Convention by virtue of article 29 of the Convention. Thus, in order to guarantee compliance with Article 47.d of the Convention and due to the chronological criteria for submitting the petitions, the Commission lacks competence to review these issues raised again in the petition under analysis. In view of the foregoing, the Commission refrains from ruling on the other admissibility requirements due to the fact that there is a duplication between this and case 13,649 pending before the Commission and therefore does not comply with the admissibility requirements in accordance with Article 46.1. c of the American Convention.

VIII. DECISION

1. Declare this petition inadmissible; and
2. Notify the parties of this decision and 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 12th day of the month of December, 2020. (Signed:) Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President, Margarette May Macaulay, Julissa Mantilla Falcón, and Stuardo Ralón Orellana, Commissioners.

¹² IACHR, Report No. 96/98, Petition 11.827. Inadmissibility. Peter Blaine. Jamaica. December 17, 1998, para. 42.