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Title/Style of Cause:	Walter Humberto Vasquez Vejarano v. Peru
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Decided by:	Chairman: Ambassador John Donaldson; First Vice Chairman: Dr. Carlos Manuel Ayala Corao; Second Vice Chairman: Professor Robert Kogod Goldman; Members: Ambassador Alvaro Tirado Mejia, Dr. Oscar Lujan Fappiano, Dean Claudio Grossman.
Dated:	16 October 1997
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I. BACKGROUND

1. On Sunday, April 5, 1992, the so-called "self-coup" occurred in Peru, when, by means of Decree Law No. 25.413, known as the Basic Government Law on Emergencies and National Reconstruction, President Alberto Fujimori Fujimori dissolved the Congress, the Court of Constitutional Guarantees, and the National Council of the Judiciary.

2. In conformity with this Decree Law, President Fujimori began what he described as "the organization of the judiciary, the Court of Constitutional Guarantees, the National Council of the Judiciary, and the Public Ministry, to turn them into democratic institutions, to help bring about the pacification of Peru, to afford access to proper administration of justice for the great majority, to definitively eliminate the corruption rampant in the judicial apparatus, and to seek to prevent impunity for crimes perpetrated by terrorists, drug traffickers, and organized crime".

3. To that end, the Government of Emergency and Reconstruction issued Decree Law No. 25.423 published in the April 9, 1992 issue of the Official Gazette, "El Peruano", which in its sole article removed from office thirteen Supreme Court justices in conformity with Decree Law No. 25.418, without providing any reason or legal grounds. This measure paralyzed the administration of justice, and the regular operations of the Judiciary were temporarily suspended (Decree Law No. 25.419), with the access of magistrates, officials, and litigants to the Palace of Justice prohibited by force.

4. Then on April 25, 1992, the Government issued Decree Law No. 25.447 which appointed thirteen provisional justices to the Supreme Court, and on April 28, 1992, issued Decree Law No. 25.454 outlawing claims for Amparo aimed at impugning the effect of the implementation of

Decree Laws Nos. 25.423, 25.422, and 25.446, thus depriving the dismissed members of the Supreme Court of that remedy.

II. PETITIONERS

5. This case has been filed by former Justice of the Supreme Court of Peru, Walter Humberto Vásquez Vejarano, against the Republic of Peru (hereinafter "the Peruvian State," "the State" or "Peru"), for having been arbitrarily removed from office by means of Decree Law No. 25.423 of April 9, 1992, along with 12 other Supreme Court justices.

III. FACTS

6. On April 26, 1993, a complaint submitted by the petitioner was received by the Inter-American Commission on Human Rights (hereinafter "the Commission"), which alleged that he had been dismissed *manu militari* by the President of Peru, without a hearing or trial, together with twelve other justices, from their positions on the Supreme Court of Peru, all victims of Decree Law No. 25.423, published in the Official Gazette on April 9, 1992.

7. On that day, along with the dismissal of the aforementioned justices, the members of the National Council of the Judiciary were dismissed, the Court of Constitutional Guarantees abolished, and Parliament dissolved.

8. On April 27, 1992, President Alberto Fujimori issued Decree Law No. 25.454, published in the Official Gazette on April 28, 1992, which prohibited the processing of writs of Amparo presented in relation to the present case, the right to which was granted by Law No. 23.506. This writ is established in the aforementioned law as well as in Article 295 of the Peruvian Constitution.

9. To assert his constitutional rights, the petitioner brought an action for Amparo on May 26, 1992, seeking to have Decree Law No. 25.423 declared unconstitutional, and requesting that, upon favorable consideration of the action, his position prior to the entry into force of the aforementioned Decree Law be restored, that is, to full exercise of his office as Justice of the Supreme Court of Peru.

10. The action for Amparo was rejected at all levels of the judiciary, that is, lower court, the Court of Appeals, and finally the Supreme Court, the decree in question thus remaining in place, all domestic legal remedies thus being exhausted in the final judgment of March 4, 1993, of which the petitioner was notified on April 12, 1993.

11. According to the petitioner, all domestic remedies were exhausted with the final judgment of the Supreme Court, since access to the Court of Constitutional Guarantees had been abolished. The petitioner also noted that there was no other instance of appeal or remedy possible within the Peruvian legal system.

IV. PROCEEDINGS BEFORE THE COMMISSION

12. On April 26, 1993, the Commission Secretariat received a complaint dated April 22, 1993, filed by the petitioner against the Peruvian State, alleging a violation of Article 8 (Right to a Fair Trial), Article 9 (Freedom from Ex Post Facto Laws), Article 23 (Right to Participate in Government), and Article 25 (Right to Judicial Protection) of the American Convention on Human Rights.

13. In a letter of June 2, 1993, the Commission transmitted the pertinent portions of the petition to the Peruvian State, so that the Government would supply all the pertinent information by the 90-day deadline. A letter was also sent to the petitioner acknowledging receipt of his complaint and informing him that processing had begun.

14. On September 13, 1993, the Executive Secretariat of the Commission (hereinafter "the Secretariat"), received a communication dated September 10 transmitting a letter from the Peruvian State which pointed out that "by means of the Constitutional Law of March 12, 1992, the Democratic Constituent Congress created the Tribunal of Honor of the Judiciary, which is mandated, inter alia, to receive requests for reinstatement filed by the members of the Supreme Court who were dismissed by Decree Laws No. 25.423, 25.442, and 26.618, to evaluate them and rule on the dismissal or directing that the individual be reinstated to the office from which he had been dismissed after the petitioners have made their case, the final decision being the ratification vote or not of the Constituent Congress. Therefore Dr. Vásquez Vejarano should have addressed himself to this Tribunal of Honor, as it is known that this Tribunal had already made the corresponding evaluations in relation to several other dismissed former members of the Supreme Court."

15. On October 4, 1993, the Commission sent a communication to the petitioner informing him of the response of Peru, and requesting him to forward his comments within 45 days.

16. On October 4, 1993, the Secretariat received another communication from the Peruvian State stating that the National Council on Human Rights of the Ministry of Justice of Peru stated that a frank policy of restructuring the judiciary was being implemented that began with the promulgation of Decree Law No. 25.418, temporarily installing the Government of National Emergency and Reconstruction, which proposed, inter alia, the organization of the judiciary, the Court of Constitutional Guarantees, the National Council on the Judiciary, and the Public Ministry, to allow access to the proper administration of justice for the great majority, and to definitively eliminate the corruption rampant in the judicial system. Following this introduction were the pertinent parts of the final judgment issued by the Supreme Court on March 4, 1993 rejecting the writ of Amparo filed by the petitioner, sustaining that the impugned Decree was not unconstitutional. It goes on to state that on March 12, 1993, the Constituent Congress created a special provisional tribunal called the Tribunal of Honor of the Judiciary, having five members, empowered to receive within ten days requests for reinstatement submitted by the dismissed Supreme Court justices. The letter concludes by stating that: "the law afforded the appropriate opportunity for the petitioner to assert his right to request reinstatement ... he did not assert this right".

17. On October 25, 1993, the Secretariat sent the petitioner a copy of the information presented by the State and asked him to submit his comments within 45 days.

18. On December 27, 1993, the Secretariat received a communication from the petitioner responding to and rejecting point by point each of the arguments submitted by the State. Regarding the aforementioned exhaustion of domestic remedies, in his point 3, the petitioner mentioned the writ of Amparo of May 26, 1992 which was declared inadmissible because on April 28, 1992, Decree Law No. 25.454 had entered into force, through which the Government prohibited the dismissed justices from taking such action, which in the view of the petitioner is unconstitutional as the right of Amparo is guaranteed in Article 295 of the Peruvian Constitution, which was in force.

19. Regarding the issue of lodging an appeal with the Tribunal of Honor of the Judiciary, the petitioner claimed that no provision is made for this body in the 1979 Constitution, nor in the new Constitution. He sustained that when his rights were violated, that Tribunal did not exist, and the only legal recourse available for defending one's rights was the writ of Amparo. The petitioner claimed that "in this situation, it cannot be sustained that I was given an opportunity to sue. Such a statement seeks to avoid the basic issue: the lack of due process compulsory removal of the right of self-defense".

20. On June 2, 1994, the Secretariat received a communication from the Peruvian State dated May 31, 1994, in which the State responded to the petitioner's reply stating that "the fact that the petitioner had filed a writ of Amparo demonstrates that the aforementioned citizen made use of the measures in force in the Peruvian legal system to assert his rights". The following paragraph adds, "the petitioner had a reasonable opportunity to request reinstatement in conformity with the provisions of Constitutional Law of March 12, 1993, Article 3, paragraph (a)". However, he did not do so, as is apparent from a communication sent by the Secretary General of the Tribunal of Honor of the Judiciary.

21. When the Government's reply was transmitted to the petitioner, the latter, by means of a communication dated November 14, 1994, received by the Commission on November 17, 1994, indicated that as regards the exhaustion of domestic remedies, in relation to the writ of Amparo and the State's position that this would have been a remedy demonstrating access to justice, enclosed photocopies of Decree Law No. 25.454, which in Article 2 states: "A writ of Amparo aimed at directly or indirectly impugning the effects of enforcement of Decree Laws Nos. 25.423, 25.422, and 25.446 is inadmissible," which included the decree by which he was dismissed from office.

22. Regarding the failure to seek any remedy via the Tribunal of Honor of the Judiciary, the petitioner indicated, firstly, that that tribunal was created by the so-called "Constitutional Law" issued on March 12, 1993, that is, more than ten months after the violation denounced, for which reason in his view it was unreasonable to argue that he had "reasonable opportunity" to file an action with that tribunal. Secondly, regarding the Constitutional Laws and the Tribunal of Honor, these institutions were not created by any of the constitutions of Peru, neither the 1979 Constitution in force at the time of the "self-coup", or the new Constitution of 1993. He, therefore, sustained that the Tribunal of Honor is simply an entity created "to whitewash the coercive measures issued by the regime against the justices".

23. In this regard, he added that none of the five dismissed members of the Supreme Court who sought a remedy with the Tribunal of Honor were reinstated in their posts; they were not even informed of the alleged charges leading to their dismissal, as compared with the fate of the justices who were appointed as a result of the "self-coup", seven of the 13 of whom were confirmed as members by the Tribunal of Honor. Finally, he stated that the legal nature of that body is highly controversial in Peru.

24. He concluded the communication referring to the essence of his claim: the lack of due process, the violation of his right to self-defense, and violation of principles inherent to personal and professional dignity and prestige on removing him from public office.

25. On February 15, 1995, the Commission received a Note from the Peruvian State (Report No. 014-95/jus/cndh-d sent by the Ministry of Justice) responding to the petitioner's statements of November 14, in which Peru asserted that the petitioner had the opportunity of requesting reinstatement through the remedy provided in the Constitutional Law of March 12, 1993, not by submitting his case to the Tribunal of Honor for review.

26. On April 4, 1995, the Commission received a report from the Public Prosecutor's Office transmitted by the Peruvian State. In point 2 of that report, in relation to exhaustion of domestic remedies, the Public Prosecutor's Office stated that the petitioner could have filed a writ of Amparo alleging the unconstitutionality of Decree Law No. 25.454, which cut off his right to invoke the writ of Amparo to contest his dismissal, which he had not done.

27. Secondly, regarding the option of filing an appeal for reinstatement with the Tribunal of Honor of the Judiciary, it sustained that this option did not exclude other actions which the justices filed with ordinary courts, which only corroborates the attitude of wanting to remove any excess committed against the former justices, and in this case by the Executive against the petitioner. Finally, it contested the petitioner's argument regarding the alleged unconstitutionality of the Tribunal of Honor, stating that it was necessary for the new Democratic Constituent Congress to issue laws of constitutional rank given the exceptional situation in which Peru found itself, as it had the character of an ordinary constituent congress.

28. When these presentations were forwarded to the petitioner, he replied in a communication submitted on June 23, 1995, which in pertinent part stated that regarding the possibility of having alleged the unconstitutionality of Decree Law No. 25.454 which suspended the right to Amparo, he considered this an argument contradicting the rest of the document, in which the need of the executive branch to assume executive and legislative functions is explained. The Government of National Reconstruction governed by means of decree laws, with which it removed high officials in all branches of government, thus ending all independence and impartiality, and in practice eluded all controls of legality and constitutionality.

29. Regarding an appeal for reinstatement with the Tribunal of Honor of the Judiciary, he stated that the argument is inconsistent given that his case had already been ruled on before the Supreme Court when the Tribunal of Honor was installed, and the Tribunal only proceeded to ratify what the State had done and rejected all applications submitted by the Supreme Court justices.

30. On September 7, 1995, the Peruvian State submitted another letter to the Commission, dated August 7, 1995, from the Public Ministry-Public Prosecutor's Office, (Report No. 163/95-mp-fn-dicaj). In this report, the Public Ministry responded to the arguments included by the petitioner in his submission of June 23, 1995, in which he replied to the contentions of the Public Ministry. No further background information was enclosed; the position of the Public Prosecutor's Office only reaffirmed its position on each of its points.

31. As there were no further pertinent presentations on admissibility or the exhaustion of domestic remedies, and the communication did not touch on the essence of the matter and the possibility of a friendly settlement, the Commission proceeded to analyze the admissibility of this complaint, responding to the allegation of Peru that domestic remedies had not been exhausted by the petitioner.

V. ADMISSIBILITY

32. The petition meets the formal admissibility requirements established in Article 46 of the American Convention on Human Rights. The petition was submitted within the period established by Article 46 (b) and Article 38 of the Regulations of the Commission: the petitioner was notified on April 12, 1993 of the final judgment of the Supreme Court rejecting the writ of Amparo submitted, and the petition was presented to the Commission on April 26, 1993, within the six months established in the American Convention.

33. In conformity with Article 46 (c) of the American Convention and Article 39 of its Regulations, the Commission has no information that the issue which is the subject of this petition is subject to any other international procedure.

34. The Peruvian State raised the initial objection that domestic remedies had not been exhausted by the petitioner, stating that he should have filed an application for reinstatement with the Tribunal of Honor of the Judiciary, which was the organ having jurisdiction to review and rule on the situation of all members of the Supreme Court who had been unjustifiably dismissed from office.

35. The petitioner stated that he had exhausted all available domestic remedies, as he had filed a writ of Amparo on time and in the appropriate form against Decree Law No. 25.423, by means of which the Executive Branch dismissed 13 Supreme Court justices. This writ was rejected at all levels of the judiciary, being dismissed by final judgment of March 4, 1993 issued by the Supreme Court of Peru. According to the statements of the petitioners, at the time the facts denounced took place, there was no other legal remedy, as the aforementioned Tribunal of Honor did not exist; it was only created ten months afterwards by means of Constitutional Law of March 13, 1993.

36. The petitioner also stated that the Tribunal of Honor was only set up to legitimize previous decisions, lacking all required independence and impartiality necessary to conform to the principles of due process. The Tribunal of Honor was described as a body foreign to the Peruvian legal system, not included in any Constitution, nor was the law creating it. Finally, he

stated that the law is absolutely inadequate and ineffective, since of the 13 members of the Supreme Court who had been dismissed, five filed an action with the Tribunal of Honor and not a single one was reinstated in his post. Furthermore, in the cases of these ex-justices, none was given the reasons for his dismissal, even in the cases which had been reviewed, since no reasons were given for these resolutions, omitting a basic requirement of due process. Thus, the petitioner stated that he had exhausted all remedies available to him, which were moreover undermined by the decision of the Government to deprive him the same, since by means of Decree Law No. 25.454, the Government deprived the dismissed Supreme Court justices of the right of Amparo to contest Decree Law No. 25.423.

37. Regarding the aforementioned arguments, the State confined itself to stating that the petitioner should have alleged the unconstitutionality of the Decree that deprived him of the right of Amparo, since this remedy was established in the Constitution. Regarding review of the case by the Tribunal of Honor, it confined itself to stating that this was an effective and adequate remedy that had been used before, while not discussing the number or names of those who had filed cases and the results of such cases. It also stated that the issue regarding the success of actions filed before the Tribunal of Honor in itself is not a reason to not use a means established by law for the solution of a legal conflict.

38. From the background information enclosed and the facts set out, it can be seen that after the "self-coup", the independence of the judiciary was severely weakened, as more than 50% of the Supreme Court was replaced by the President by means of decrees.[FN1] Moreover, it is notable that the constitutionality of these decrees was not duly monitored: the Public Prosecutor's Office of Peru was interfered with, by means of Decree Law No. 25.425 issued on April 8, 1992, the Public Prosecutor was dismissed, thus damaging the independence of that body. Under Article 158 of the Constitution of Peru "the Public Ministry is autonomous...". Thus its independence was affected in the exercise of its functions, among which were "Promoting on its own initiative, or on the application of a party, judicial action in the defense of legality and public interest protected by law"[FN2] which weakens the control of the constitutionality of said decree laws.

[FN1] Decree Law No. 25.423, published in the official gazette El Peruano on April 28, 1992.
[FN2] Political Constitution of Peru, Article 159.

39. The State also sustained that the possibility was available of suing for reinstatement with the Tribunal of Honor of the Judiciary. However, this remedy was made available over 10 months after the date of dismissal of the justices as this organ was created by what is known as the Constitutional Law published in the Official Gazette on March 13, 1993. It was thus not a option for seeking a prompt remedy affording real access to a solution for the petitioner, as it did not yet exist.

40. Another point that should be analyzed is whether such a remedy is adequate and effective, and whether during the proceedings the rules of due process are respected, indispensable to the determination of whether a domestic remedy truly existed, as the State

asserts. In this sense, what first springs to mind is the time it took to create this Tribunal. Secondly, the legal nature of the Tribunal merits examination and the time given to possible victims to lodge their appeals.

41. The first point is whether the remedy is adequate. In this regard, on March 13, 1993, the "Constitutional Law" was issued, creating the Tribunal of Honor of the Judiciary, which pursuant to its Regulations is composed of five members who, in conformity with Chapter VI, shall have inter alia the function of hearing the case for "Restitution to office of the Supreme Court justices and public prosecutors." It thus clearly appears that this tribunal has jurisdiction to hear this type of case. However, on studying the procedure, under Article 4 of the Constitutional Law of March 13, and Article 18 of its Regulations, a deadline is set for submitting cases to the panel, which is "ten calendar days subsequent to the installation of the Tribunal of Honor." As can be seen, the deadline for the application for reinstatement is extremely short, even more so if account is taken of the fact that this solution was created more than 10 months after the dismissal of the justices. Finally, once the Panel hands down its decision on the case, its decision is sent for vote to the plenary session of the Democratic Constituent Congress.

42. Secondly, the petitioner sustains that this remedy is not effective as it lacks all independence, and the demonstration of its partiality is the fact that none of the five former members of the Supreme Court who filed their cases were restored to office. Moreover, none of them was given background information or an explanation of the grounds for their dismissal, despite their case having been heard by the Tribunal of Honor. For its part, the Peruvian State has only indicated that this is not true, and enclosed certificates attesting to the fact that the petitioner had not appealed for review. Other than this, the State has not submitted any document substantiating that the remedy is effective or that anyone has previously had recourse to it, even though the State is the only party having access to the decisions of the Tribunal of Honor, as its book of resolutions is not public.

43. Finally, regarding the principles of due process in demonstrating that this remedy is effective, it is notable that the procedure is extremely summary, with a ten-day deadline to file a case, ten days for the State to respond and subsequently five days for the tribunal to study the case which sets it out for the Tribunal of Honor sitting in plenary to decide. It is highly controversial that under Article 4 of the Regulations, the members of the Tribunal of Honor may not be challenged for any reason except for not satisfying the requirements established in Article 244 of the Constitution (the requirements for being a Supreme Court justice). Finally, the decisions of this tribunal are not public and once a decision has been reached, it is sent to a plenary session of the Democratic Constituent Congress, which decides each case by a nominal, public vote on whether to ratify it (Article 4 of the Constitutional Law of March 13, 1993).

44. As can be seen, the final decision falls to the Congress by a show of hands vote, which demonstrates the total lack of independence of this tribunal and the lack of judicial guarantees and effective remedies.

45. In conformity with Article 46.2 (a) and (b)[FN3] of the American Convention, in the case under reference, by means of the final judgment issued by the Supreme Court rejecting the

petitioner's suit for Amparo, of which he was informed on April 12, 1993, the petitioner would have exhausted all domestic remedies.

[FN3] Article 46.2 states: (a) "The domestic legislation of the State concerned does not afford due process for the protection of the right or right(s) that have allegedly been violated;" and (b) "The party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them."

46. In terms of satisfying formal requirements, Peru is a State Party to the American Convention, having ratified it on July 28, 1979, and therefore the Commission has jurisdiction to hear this case.

VI. CONCLUSIONS

47. The Commission concludes that the petition meets the formal admissibility requirements of Article 46 of the American Convention.

48. Regarding the objections of the Peruvian State in terms of not having exhausted domestic remedies, the Commission considers that the Final Judgment which rejected the writ of Amparo was the most efficient and proper means for resolving this conflict.

49. Regarding the existence of other domestic remedies as alleged by Peru, such as the application for reinstatement in post with the Tribunal of Honor of the Judiciary, this falls within the exception established in the aforementioned Article 46.2 (a) and (b), and therefore the petitioner exhausted all remedies available in the Peruvian legal system.

50. The facts alleged by the petitioner tend to establish a violation of the rights guaranteed in Article 8 (Right to a Fair Trial), Article 9 (Freedom from Ex Post Facto Laws), Article 11 (Right to Privacy), Article 23 (Right to Participate in Government), Article 24 (Right to Equal Protection), and Article 25 (Right to Judicial Protection) of the American Convention on Human Rights.

51. For the above reasons the Commission declares admissible the present case submitted by the former Supreme Court Justice of Peru, Mr. Walter Humberto Vásquez Vejarano, against the Peruvian State.

52. To publish this admissibility report in the Annual Report to the General Assembly of the Organization of American States.