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Title/Style of Cause:	Carlos Torres Benvenuto, Javier Mujica Ruiz-Huidobro, Guillermo Alvarez Fernandez, Reymer Bartra Vasquez and Maximiliano Gamarra Ferreyra v. Peru
Doc. Type:	Decision
Decided by:	Chairman: Professor Robert K. Goldman; First Vice-Chairman: Dr. Helio Bicudo; Second-Vice Chairman: Dean Claudio Grossman; Members: Prof. Carlos Ayala Corao, Dr. Jean Joseph Exume, Dr. Alvaro Tirado Mejia.
Dated:	27 September 1999
Citation:	Torres Benvenuto v. Peru, Case 12.034, Inter-Am. C.H.R., Report No. 89/99, OEA/Ser.L/V/II.106, doc. 6 rev. (1999)
Represented by:	APPLICANTS: Programa de Derechos Humanos del Centro de Asistencia Laboral del Peru and the Asociacion Pro Derechos Humanos “APRODEH”
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I. SUMMARY

1. In a petition submitted to the Inter-American Commission on Human Rights (hereinafter “the Commission” or “IACHR”), on February 1, 1998, and amplified on May 25 of that same year, the non-governmental organizations Programa de Derechos Humanos del Centro de Asistencia Laboral del Perú (CEDAL) and the Asociación Pro Derechos Humanos “APRODEH” (hereinafter “the petitioners”) denounced that the Republic of Peru (hereinafter “Peru”, “the State” or “the Peruvian State”) violated the rights to property, to equal protection, and to judicial protection established in Articles 21, 24 and 25 of the American Convention on Human Rights (hereinafter the “Convention” or the “American Convention”) of Carlos Torres Benvenuto, Javier Mujica Ruiz-Huidobro, Guillermo Alvarez Fernández, Reymer Bartra Vásquez and Maximiliano Gamarra Ferreyra, when it failed to comply with judgements of the Supreme Court of Justice of the Republic of Peru. The State alleged that the case is inadmissible because the remedies under domestic law have not been exhausted and because the period for submitting the claim has expired. The Commission considers that, in the instant case, remedies under domestic law have been exhausted and the period for submitting the claim has not run out. The IACHR decides to admit the case, to proceed with the analysis of the merits of the case, and to make itself available to the parties to a friendly settlement based on the respect for human rights established in the Convention.

II. PROCESSING BY THE COMMISSION

2. On July 16, 1998, the Commission opened the case, forwarded the relevant parts of the complaint to the Peruvian State and requested that information should be presented within 90 days. Peru responded on October 14, 1998. The petitioners presented their observations on the State's response on December 4, 1998. The State presented final comments on May 17, 1999. On July 12, 1999, the petitioners presented an additional document.

III. POSITION OF THE PARTIES

A. Position of the petitioners

3. The petitioners declare that, during their active working life, Carlos Torres Benvenuto, Maximiliano Gamarra Ferreyra (who died about two and a half years ago), Javier Mujica Ruiz-Huidobro, Guillermo Alvarez Fernández and Reymer Bartra Vásquez were employed as officials of the Superintendencia de Banca y Seguros (hereinafter "SBS"). The latter is a State agency, with operational, administrative and economic autonomy, responsible for overseeing the banking and insurance sector. As of 1943, the SBS has had its own Pension Fund.

4. They state that the SBS was obliged to recognize that Torres Benvenuto, Gamarra Ferreyra, Mujica Ruiz-Huidobro, Alvarez Fernández and Bartra Vásquez were entitled to and were beneficiaries of the rights established in the pension and compensation regime for civilian government officials regulated by Decree Law N° 20530, as they were public officials who had satisfied the relevant legal requirements.

5. They indicate that, having reached retirement age and complied with the relevant legal requirements, Torres Benvenuto, Gamarra Ferreyra, Mujica Ruiz-Huidobro, Alvarez Fernández and Bartra Vásquez ceased working for this agency and the SBS acknowledged their right, acquired under domestic law, to a severance pension which would be indexed to the salary of the SBS employee who occupied the same or a similar position as the one held by the above mentioned men until the date of their retirement.

6. They state that, as of September 1992, and although Torres Benvenuto, Gamarra Ferreyra, Mujica Ruiz-Huidobro, Alvarez Fernández and Bartra Vásquez had already been enjoying the right to an indexed pension, the SBS arbitrarily reduced the amounts of the pensions that it was paying them to one-fifth or one-sixth of their nominal value, depending on the person. For example, the petitioners indicate that the monthly pension of one of them was reduced from S/.2,258.67 (two thousand two hundred and fifty-eight soles and sixty-seven cents) to S/.504.00 (five hundred and four soles).

7. They indicate that as of October 1992, Torres Benvenuto, Gamarra Ferreyra, Mujica Ruiz-Huidobro, Alvarez Fernández and Bartra Vásquez exercised the constitutional remedy of amparo to contest the violation to which they had been subject. As a result of exercising this remedy, as of May 1994, the Constitutional and Social Chamber of the Supreme Court of Justice of the Republic of Peru pronounced various judgements which declared with merit the claims presented by the petitioners and ordered the SBS to restore to the claimants the right to enjoy

their pension, indexed to the salaries of those employed in similar positions in the SBS. The petitioners provided the IACHR with copies of these judgements.

8. They allege that, although these judgements of the Supreme Court of Justice of the Republic of Peru can be considered *res judicata* since they were issued in 1994, it has been impossible to execute any of them, although attempts have been made during the last four years using all possible means, including the criminal citation of the State agents who acted as aggressors or resisted court orders to restore the violated rights.

9. They sustain that the non-compliance with the above mentioned judgements constitutes a violation by the Peruvian State of the rights to property, to equal protection and to judicial protection established in Articles 21, 24 and 25 of the American Convention on Human Rights of Torres Benvenuto, Mujica Ruiz-Huidobro, Alvarez Fernández, Bartra Vásquez and Gamarra Ferreyra.

B. Position of the State

10. The State alleges that, in 1994, in execution of the judgements pronounced by the Supreme Court of Justice of Peru in favor of Torres Benvenuto, Gamarra Ferreyra, Mujica Ruiz-Huidobro, Alvarez Fernández and Bartra Vásquez, the SBS restored them with the difference in the amount of their pensions corresponding to the months of September and October 1992.

11. It alleges that on October 23, 1992, in application of the Peruvian Government's new economic policy guidelines, there was an "adjustment of the pension amounts, including those related to the regime of Decree Law N° 20530. In this respect, Decree Law N° 25792 was issued, and its Article 5 established that the Ministry of Economy and Finance assumed the payment of the pensions of those who no longer worked for or had retired from the SBS and who were covered by the regime of Decree Law N° 20530." Said article also established that the Ministry would pay these pensions based on the pensions paid by the Ministry to its workers and officials, and that in "no case will they be brought into line with or relate to the salaries paid by the Superintendency of Banking and Insurance to personnel governed by a private sector system".

12. It indicated that, as a consequence of Decree Law N° 25792, as of October 1992, the SBS was no longer obliged to comply with the previously mentioned judgements of the Supreme Court of Justice.

13. It asserts that the petitioners have not disputed the validity of the above mentioned Decree Law N° 25792 in court and, therefore, that the present complaint should not be admitted, since remedies under domestic law have not been exhausted.

14. It alleges that the present complaint is inadmissible as it was lodged after the expiration of the six-month period stipulated in Articles 46(1)(b) and 38 of the American Convention and of the Regulations of the IACHR, respectively. The State maintains that this period has expired, because ever since 1994 the SBS restored to Torres Benvenuto, Gamarra Ferreyra, Mujica Ruiz-Huidobro, Alvarez Fernández and Bartra Vásquez the difference in the amount of their pensions corresponding to the months of September and October 1992. Within the same argument on

expiration, the State maintains that on December 13, 1995, November 12, 1996 and December 12, 1996, judgements were pronounced declaring without merit the request that the officials of the SBS should be criminally indicted for non-compliance with or disregard of the judgements of the Supreme Court of Justice in favor of the alleged victims. It adds that the period had also expired with regard to a decision of the Attorney General's Office which resolved that there were no grounds for filing a criminal complaint regarding the above mentioned facts.

IV. ANALYSIS

15. The Commission will now proceed to analyze the admissibility requirements for a petition under the American Convention.

A. The *ratione materiae*, *ratione personae* and *ratione temporis* competence of the Commission

16. With regard to *ratione materiae* competence, the Commission observes that from the facts narrated by the petitioners and not disputed by the State, it can be concluded that final judgements of the Supreme Court of Justice of Peru exist ordering the SBS to restore to Torres Benvenuto, Gamarra Ferreyra, Mujica Ruiz-Huidobro, Alvarez Fernández and Bartra Vásquez the right to receive their pensions indexed to the salaries of those carrying out similar activities in the SBS.

17. Since Article 25 of the Convention specifically establishes that States parties agree to ensure that the competent authorities shall enforce any remedy when granted by a simple and prompt recourse, or any other effective recourse that protects the individual against acts that violate his fundamental rights, the Commission has competence to decide whether the alleged non-compliance with what had been ordered in the judgements of the Constitutional and Social Chamber of the Supreme Court of Justice of Peru, as a result of the amparo action filed by Torres Benvenuto, Gamarra Ferreyra, Mujica Ruiz-Huidobro, Alvarez Fernández and Bartra Vásquez, constitutes a violation of Article 25 of the Convention by the Peruvian State.

18. With regard to *ratione personae* competence, the Commission observes that the petitioners charge the Peruvian State with violating human rights established in the American Convention. Since Peru ratified this Convention on July 28, 1978, the Commission has *ratione personae* competence to hear this petition under the express provision of the Convention. With regard to the petitioners, the Commission observes that they are non-governmental organizations that are legally recognized in Peru and according to Article 44 of the Convention, they are entitled to lodge petitions with the Commission. Consequently, and with respect to the petitioners, the Commission has *ratione personae* competence to hear this petition. In relation to the presumed victims, these are persons with regards to which Peru has agreed to respect and guarantee the rights established under the Convention. Therefore, regarding this aspect the Commission also has competence to hear this petition.

19. As for *ratione temporis* competence, the Commission observes that the facts of which the Peruvian State is accused occurred in 1992 and thereafter. That is, after Peru had ratified the

American Convention in 1978. Consequently, the Commission concludes that it has *ratione temporis* competence to hear this case.

B. Requirements for the admissibility of the petition

a. Exhaustion of remedies under domestic law

20. The State alleges that remedies under domestic law have not been exhausted as the petitioners have not disputed in court the validity of the above mentioned Decree Law N° 25792, under which the State itself transferred to the Ministry of Economy and Finances the obligation to pay the pensions of those who no longer worked for or had retired from the SBS.

21. In this respect, the Commission observes that the matter presented is whether or not the Peruvian State has complied with the judgments pronounced by the Supreme Court of Justice of Peru in the amparo action filed against the decisions of the SBS to reduce the amounts of the pensions that they had been paying to Torres Benvenuto, Gamarra Ferreyra, Mujica Ruiz-Huidobro, Alvarez Fernández and Bartra Vásquez. Accordingly, the Commission considers that, with the filing of these amparo actions and the subsequent judgments of the Supreme Court of Justice of Peru, the remedies under domestic law have been exhausted, and therefore the requirement established in Article 46(1) of the American Convention has been fulfilled.

b. Period for submission

22. With regard to the requirement stated in Article 46(1)(b) of the Convention, according to which the petition should be lodged within a period of six months from the date on which the victim was notified of the final judgment that exhausted domestic remedies, the Commission ratifies its doctrine, according to which:

non-compliance with an unappealable judgment constitutes a continued violation by States that persists as a permanent infraction of Article 25 of the Convention, which establishes the right to effective judicial protection. Therefore, in such cases, the requirement concerning the period for submission of petitions stipulated in Article 46(1)(b) of the American Convention is not effective.[FN1]

[FN1] IACHR, Cabrejos Bernuy case, Report N° 75/99, Case 11.800 (Peru), published in the 1999 Annual Report of the IACHR, para. 22.

23. In accordance with the above, the requirement regarding the period for submission of petitions established in Article 46(1)(b) of the American Convention is not applicable in this case, where the issue submitted to the IACHR is the alleged continued non-compliance with the judgements of the Supreme Court of Justice of Peru in the amparo actions filed against the decision of the SBS to reduce the amounts of the pensions that it was paying to Torres Benvenuto, Gamarra Ferreyra, Mujica Ruiz-Huidobro, Alvarez Fernández and Bartra Vásquez.

24. With regard to the expiration alleged by the State because the complaint was submitted after the six-month period had elapsed, calculated from December 13, 1995, November 12, 1996, and December 12, 1996--dates of issuance of the judicial decisions which declared without merit the request that the officials of the SBS should be criminally indicted for non-compliance with or disregard of the judgements of the Supreme Court of Justice in favor of the alleged victims--and because the period related to the resolution of the Attorney General's Office that resolved that there were no grounds for filing a criminal action with regard to the above mentioned facts had also expired, the Commission considers that this argument has no merit, because the matter submitted concerns the alleged continued non-compliance with the judgements of the Supreme Court of Justice of Peru in the amparo actions filed against the decisions of the SBS to reduce the amounts of the pensions that it had been paying to Torres Benvenuto, Gamarra Ferreyra, Mujica Ruiz-Huidobro, Alvarez Fernández and Bartra Vásquez. Accordingly, the IACHR confirms that in the present case the requirement concerning the period for submission of petitions established in Article 46(1)(b) of the American Convention is not applicable.

c. Duplication of proceedings and res judicata

25. The Commission understands that the subject of the petition is not pending in another international proceeding for settlement, nor is it substantially the same as one already studied by the Commission or by another international organization. Consequently, the requirements established in Articles 46(1)(c) and 47(d) are also satisfied.

d. Characterization of the alleged facts

26. The Commission considers that the petitioners' complaint refers to facts that, if they are true, may constitute a violation of the rights guaranteed by the Convention since, as established above, the issue submitted to the Commission is whether or not the alleged non-compliance with a judgement of the Supreme Court of Peru involves a violation of the American Convention by the Peruvian State.[FN2]

[FN2] With regard to the allegedly reiterated nature of this non-compliance and to the judicial remedies unsuccessfully exercised, cf., for comparative purposes, IACHR, General Gallardo case, Report N° 43/96, Case 11.430 (Mexico), published in the 1996 Annual Report of the IACHR, p. 485-513.

V. CONCLUSIONS

27. The Commission considers that it has competence to hear this case and that, in accordance with Articles 46 and 47 of the American Convention, the case is admissible as it was described above.

28. Based on the de facto and de jure arguments aforementioned, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present case admissible.
2. To notify this decision to the petitioners and to the State.
3. To continue to analyze the merits of the case.
4. To make itself available to the parties in order to reach a friendly settlement based on the respect for the rights established in the American Convention and to invite the parties to advise it about this possibility.
5. To publish this decision and include it in the Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 27th day of the month of September, 1999. (Signed): Robert K. Goldman, Chairman; Hélio Bicudo, First Vice-Chairman; Claudio Grossman, Second Vice-Chairman; Commissioners: Alvaro Tirado Mejía, Carlos Ayala Corao and Jean Joseph Exumé.