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Title/Style of Cause: Cesar Cabrejos Bernuy v. Peru
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Decided by: Chairman: Claudio Grossman;
First Vice-Chairman: Juan Mendez;
Second Vice-Chairman: Marta Altolaguirre;
Commissioners: Robert K. Goldman, Peter Laurie, Julio Prado Vallejo.
Dated: 7 March 2001
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Represented by: APPLICANT: Asociacion Pro Derechos Humanos, APRODEH
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I. SUMMARY

1. By means of a submission presented to the Inter-American Commission on Human Rights (hereafter “the IACHR”, “the Commission”, or “the Inter-American Commission”), on August 28, 1997, the nongovernmental organization Asociación Pro Derechos Humanos [Association for Human Rights], APRODEH, charged that the Republic of Peru (hereafter “Peru”, “the State” or “the Peruvian State”) violated the right to effective judicial protection enshrined in Article 25 of the American Convention on Human Rights (hereafter “the Convention” or “the American Convention”), to the prejudice of Mr. César Cabrejos Bernuy, by failing to carry out rulings of the Supreme Court of Justice and the Second Civil Chamber of the Supreme Court Justice of Lima, which on two occasions had ordered his reinstatement to the position of Colonel of the National Police of Peru, and with respect to which the authorities twice reinstated the petitioner in his position, but then immediately forced him into retirement, reproducing in each case the respective administrative order. The IACHR concludes that Peru has violated Article 25 and 1(1) of the Convention, and makes the pertinent recommendations to the Peruvian State.

II. PROCEEDINGS BEFORE THE COMMISSION

2. On September 2, 1997, the Commission opened the case, transmitted the pertinent portions of the complaint to the Peruvian State, and requested information within a period of 90 days. Peru responded in December 3, 1997. The Commission sent the petitioner the pertinent portions of the State's response on Dec. 17, 1997. The petitioner did not submit any observations to the State's response.

3. On May 4, 1999, during its 103rd regular session, the IACHR adopted Admissibility Report N° 75/99 on the present case. The Commission sent the Admissibility Report to the parties on May 12, 1999, and placed itself at their disposal in order to seek a friendly settlement to the case.

4. On July 23, 1999, the State denied any responsibility in the case and rejected the offer of friendly settlement. The Commission advised the petitioner of this response on August 31, 1999.

III. POSITIONS OF THE PARTIES

A. Position of the petitioner

5. The petitioner maintains that Mr. César Cabrejos Bernuy had 22 years of service in the National Police of Peru, when, on July 31, 1990, he was sent into retirement, because of a presumed replacement of personnel, together with 94 other colonels of the National Police.

6. The petitioner declares that this retirement took place in the context of a widespread publicity campaign in the mass media, in which the retirement of these officers was presented as a moral instruction thereby affecting the right of Mr. César Cabrejos Bernuy to his honor and good reputation.

7. Mr. César Cabrejos Bernuy appealed the decision to remove him from his post, by means of an administrative appeal, followed by a judicial appeal, filing an amparo suit which was accepted by the Constitutional and Social Chamber of the Supreme Court of Justice in a ruling handed down on June 5, 1992. This decision ordered the reinstatement of Mr. César Cabrejos Bernuy.

8. The petitioner maintains that, despite repeated requests to the judicial branch to enforce the sentence, efforts that included intervening with the Congress, the judicial order was not carried out. It indicates that on December 28, 1995, by means of Supreme Resolution N° 1389-95-IN/PNP, the National Police ordered the reinstatement of Mr. César Cabrejos Bernuy on active duty, effective December 27 of that year.

9. The petitioner alleges that, nevertheless, by Supreme Resolution N° 1445-95-IN/PNP of December 29, 1995, the National Police once again placed Mr. César Cabrejos Bernuy in retirement, as of December 27, 1995, with the same excuse, i.e. replacement of personnel. In the face of this situation, Mr. César Cabrejos Bernuy turned first to the Fifth Civil Court of Lima and later to the Second Civil Chamber of the Supreme Court of Justice of Lima, which on May 7, 1996, issued a ruling declaring inapplicable the second administrative resolution that had once again placed him in retirement.

10. The petitioner declares that, subsequently, Mr. César Cabrejos Bernuy was reinstated by Supreme Resolution N° 0227-97-IN/PNP of March 19, 1997. Nevertheless, by Supreme Resolution N° 0234-97-IN/PNP of March 26 of that same year, he was once again placed in retirement, for the reason of replacement of personnel.

11. The petitioner charges that the situation constitutes a clear and reiterated failure to abide by judicial decisions, thereby violating Mr. César Cabrejos Bernuy's right to effective judicial protection, as enshrined in Article 25 of the American Convention.

B. Position of the State

12. The State maintains that it has not violated the right to effective judicial protection in the case of Mr. César Cabrejos Bernuy. It declares that it has not failed to enforce the ruling of the Constitutional and Social Chamber of the Supreme Court of Justice of June 5, 1992. According to the State, "Mr. César Cabrejos Bernuy was reinstated in active service by means of Supreme Resolution N° 0227-97-IN/PNP of March 19, 1997, pursuant to the judicial order suspending the effects of the administrative order that had placed him in retirement". Nevertheless, for the Peruvian State this judicial ruling was not considered as preventing the respective authority from issuing another order of retirement.

13. The State indicates that retirement as a result of replacement of officers, as in the present case, is expressly permitted in Article 53 of Legislative Decree N° 745 of 1999, which provides that "in order to ensure the constant renewal of senior personnel, officers may be placed in retirement status, in accordance with needs as determined by the National Police."

14. The State alleges that the last decision to place Mr. César Cabrejos Bernuy in retirement, Supreme Resolution N° 0234/97 of March 26, 1997, has not been challenged, and that therefore he must present a new writ amparo against that third resolution, as he did against the previous two, in order to exhaust domestic remedies.

IV. ANALYSIS

A. Competence and Admissibility

15. The competence of the Commission to hear this case and the admissibility of the petition under analysis have already been established in Admissibility Report N° 75/99, which the Commission approved during its 103rd regular session.

B. Facts of the Case

16. The Commission notes that the parties do not dispute the facts of the present case. Consequently, the IACHR considers it established that Mr. César Cabrejos Bernuy, a colonel in the National Police of Peru, was placed in retirement on July 31, 1990. He challenged the retirement order, through the administrative route and subsequently through the judicial route, by bringing an amparo suit before the Constitutional and Social Chamber of the Supreme Court of Justice, which was accepted on June 5, 1992 in a ruling that ordered the reinstatement of Mr. César Cabrejos Bernuy in his position as an officer of the National Police of Peru.

17. On December 28, 1995, i.e. more than three years after the reinstatement ruling issued by the Supreme Court of Justice, the National Police of Peru, by means of Supreme Resolution N° 1389-95-IN/PNP, ordered the reinstatement of Mr. César Cabrejos Bernuy in active service as of

December 27 of that year. Immediately, however, by means of Supreme Resolution N° 1445-95-IN/PNP of December 29, 1995, the National Police once again placed Mr. César Cabrejos Bernuy in retirement status, as of December 27 1995, for the same grounds, i.e. replacement of personnel.

18. Given the situation, Mr. César Cabrejos Bernuy appealed first to the Fifth Civil Court of Lima and subsequently to a Superior Court. The latter court declared the second administrative decision of December 29, 1995, placing him once again in retirement, to be inapplicable, and by virtue of this decision the National Police again reinstated Mr. César Cabrejos Bernuy, by means of Supreme Resolution N° 0227-97-IN/PNP of March 19, 1997. A few days later, however, by means of Supreme Resolution N° 0234-97-IN/PNP of March 26 of that year, the National Police of Peru once more placed Mr. César Cabrejos Bernuy in retirement status, for the same grounds, i.e. replacement of personnel.

C. Considerations of Law

19. Because there is no dispute over the facts of the case, the Commission will now declare its position on the substance of the matter, which is to determine whether the alleged failure to carry out the ruling of the Supreme Court of Justice of Peru, of June 5, 1992, ordering the reinstatement of Mr. César Cabrejos Bernuy in his position as a colonel in the National Police of Peru, constituted a violation by the Peruvian State of the right to effect of judicial protection enshrined in Article 25 of the American Convention.

a. Introduction

20. The enforceability of rights and liberties in a democratic system requires a juridical and institutional order in which laws override the discretion of governments and in which there is control of some institutions by others, i.e., in which the rule of law exists.

21. The "Declaration of Santiago," adopted in 1959 by the Fifth Meeting of Consultation of Ministers of Foreign Affairs of member States of the OAS, noted that "the principal of the prevalence of law must be ensured through the independence of the branches of government and surveillance over the legality of acts of government by jurisdictional organs of the State."

22. In the inter-American system of human rights, the proper functioning of the judicial branch is an essential element for preventing the abuse of power by other State organs, and therefore, for the protection of human rights. The fundamental corollary of human rights is the possibility to turn to judicial bodies for the enforcement of rights. The judicial branch is undeniably the fundamental organ for the protection of human rights.[FN1]

[FN1] IACHR, Annual Report, Report on Paraguay, paragraphs 50 and 51.

23. If the judicial branch is to serve effectively as an organ for the control, guarantee and protection of human rights, it must not only be constituted formally, but it also has to be

independent and impartial, and its rulings must be carried out. This constitutes a right that member states of the OAS, and in particular States Parties to the American Convention, have the obligation to respect and to guarantee for all persons under their jurisdiction.

24. The execution of sentences of the judicial branch is intimately linked, therefore, with the very concept of the judicial function of the State. The principle of that function is to ensure social peace[FN2] and harmony by seeing to the enforcement of law and guaranteeing judicial order and individual liberty in concrete cases, by means of decisions that are binding on the parties to the proceedings. The corollary of the jurisdictional function is that judicial decisions must be carried out, in either a voluntary or coercive manner, with the assistance of the forces of public order if necessary.

[FN2] Vescovi, Enrique, Teoria General del Proceso, Editorial Temis, Bogota, 1984, page. 120.

25. Failure to carry out judicial rulings not only affects juridical security but also threatens the essential principles of the rule of law. Ensuring the execution of judicial judgments thus constitutes a fundamental aspect that is the very essence of the rule of law.

26. The American Convention establishes the following:

Article 25. Judicial Protection

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the Constitution or laws of the State concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

2. The States Parties undertake:

- a. To ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the State;
- b. To develop the possibilities of judicial remedies; and
- c. To ensure that the competent authority shall enforce such remedies when granted.[FN3]

[FN3] Emphasis added.

27. The importance of the right to judicial protection has been reiterated by the Inter-American Court of Human Rights on various occasions.[FN4] It has ruled, for example, that this right "constitutes one of the basic pillars, not only of the American Convention, but of the rule of law itself in a democratic society in the sense of the Convention."[FN5]

[FN4] See for example, I-A Court, Judicial guaranties in states of emergency, Advisory Opinion OC-9/87 of October 6, 1987, Series A N° 9, para. 24; Suarez Rosero case, judgment of November 12, 1997, Series C N° 35, paras 61-66; Loayza Tamayo case, judgment of September 17, 1997, Series C N° 33, paras. 52-55; and Habeas Corpus under suspension of guarantees, Advisory Opinion OC-8/87 of October 6, 1987, Series A N° 8, para.32.

[FN5] I-A Court, Suarez Rosero case, Judgment of November 12, 1997, Series C N° 35, paras 61-66.

28. The Inter-American Court has also indicated, with respect to compliance by States with the obligation assumed under Article 25 of the Convention, that:

a remedy that proves illusory because of the general conditions prevailing in the country, or even the particular circumstances of a given case, cannot be considered effective. This could be the case, for example, when practice has shown its ineffectiveness: when the judicial power lacks the necessary independence to render impartial decisions or the means to carry out its judgments; or any other situation that constitutes a denial of justice, as when there is an unjustified delay in the decision, or when, for any reason, the alleged victim is denied access to a judicial remedy.[FN6]

[FN6] I-A Court, Judicial guaranties in states of emergency, Advisory Opinion OC-9/87 of October 6, 1987, Series A N° 9, para. 24.

29. Article 25 of the Convention refers directly to the criterion of effectiveness of the judicial remedy, which is not exhausted by the ruling on the substance of the case, but by the enforcement of such ruling. In this respect, Juan Manuel Campo Cabal has noted, with respect to the criterion of effectiveness of judicial remedy, that

the effectiveness of the sentence must be seen as a guarantee for persons subject to the administration of the State. The State must, by all the means available to it, not only provide a jurisdictional forum for its citizens to hear any complaints that they wish to bring before a court, but must also guarantee in some manner that the effects of the ruling will be implemented, since otherwise we would be faced with the clear ineffectiveness of the right to jurisdictional protection.[FN7]

[FN7] Campo Cabal, Juan Manuel, *Medidas Cautelares en el Contencioso Administrativo*, Editorial Temis, Bogota, 1989, pp 1-4.

30. The effectiveness of the remedy, as a right, is precisely what is enshrined in the final clause of Article 25 of the Convention, which establishes the obligation of the State to guarantee the enforcement of decisions when such remedies are granted. This obligation is the culmination of the fundamental right to judicial protection.

31. The obligation of the State to guarantee the enforcement of judicial rulings takes on special importance when it is the State itself that must carry out the ruling, whether this is to be done through the executive, legislative or judicial branch, at the provincial or municipal level, through the central administration or the decentralized structure, through public enterprises or institutes, or any similar body, since such bodies are part of the State and generally enjoy procedural privileges, such as freedom from embargo for their assets. These bodies may be inclined to use their power and their privileges in an effort to ignore judicial rulings that go against them.

32. The Public Defender of Peru, who prepared a report on non-enforcement of rulings by the State administration and Peru, noted in that report that:

If it is left to the discretion of the administration to carry out sentences, the very notion of the rule of law is at risk, and conditions are created for a regime that is arbitrary and unpredictable, contrary to constitutional principles such as the separation of powers or the autonomy of the judicial branch. In turn, this violates the right to equality that all parties to the proceedings must enjoy, by subordinating the execution of the ruling to the will of one of the parties, paradoxically the losing party.[FN8]

[FN8] Public Defender, Incumplimiento de Sentencias por parte da la Administracion Estatal, Lima, October 1998, page 5.

33. When an organ of the State does not wish to carry out a judicial ruling that has gone against it, it may try to ignore the ruling by simply failing to observe it, or it may opt for more or less elaborate methods that will lead to the same objective of rendering the ruling ineffective, while trying to maintain a certain appearance of formal validity in its proceedings.

34. One such method is known as the "reproduction or reissue of administrative acts," which consists of "formal reproduction by the administration of administrative acts identical to those that were set aside or provisionally suspended by the administrative judge." [FN9] The IACHR considers it relevant, by way of illustration, to analyze this notion in comparative law.

[FN9] Ortiz-Alvarez, Luis A., La Proteccion Cautelar en el Contencioso Administrativo, Editorial Sherwood, Caracas, 1999, page 605.

35. An interesting example with respect to the legislative treatment of this notion is found in Colombian legislation, where the Código Contencioso Administrativo [Administrative Disputes Code] establishes the following:

No act that has been annulled or suspended may be reproduced by the person who issued it if it retains the same essential features as the one annulled or suspended, unless, subsequent to the ruling, the legal foundations for the annulment or suspension have disappeared.

The effects of any such act taken in violation of the foregoing precepts must be suspended provisionally. The suspension order, in this case, must be communicated and respected immediately, even if an appeal is brought against that order.[FN10]

[FN10] Colombian Administrative Disputes Code, Article 15.

36. In other legislation, such as that of Spain, the law does not regulate the matter expressly, but does so indirectly through general standards applicable to cases of reissue of administrative acts. Thus, law 29 of 1998, Regulations Governing the Administrative Disputes Jurisdiction, declares that "acts and provisions contrary to court rulings are automatically null and void, if they are issued for the purpose of avoiding compliance." [FN11] That is to say, administrative acts that reproduce acts set aside by a judicial ruling are considered null and void from the outset, by the simple fact that they are contrary to a ruling and their ultimate purpose is to avoid complying with a ruling.

[FN11] Law 29 of 1998, Regulations governing the Spanish Administrative Disputes Jurisdiction, Article 103.

37. On the other hand, there are countries where the issue of the reproduction of administrative acts is not regulated expressly by legislation, but has been the object of study by doctrine and jurisprudence. Venezuela, for example, is one of the countries with interesting jurisprudence in this area. The Supreme Court of Justice of Venezuela has explained that the reproduction or reissue of administrative acts occurs when:

A new act is issued by a public authority that is identical in its content and purpose to one previously issued by the same authority, or by another within its own sphere of competence, the objective of which reflects the presumed intent of the body issuing the act to reaffirm the contents of its original decision, when the mechanisms for exercising control over legitimacy before the competent body have already produced a decision.[FN12]

[FN12] Supreme Court of Justice, Political-Administrative Chamber, Judgment N° 572 of 16 August 1997.

38. The Venezuelan Supreme Court Justice has indicated, with respect to this question, that:

when the administration is faced with a ruling against it by a court, and attempts to ignore its duty by issuing a new act that, while different to the one rejected, reproduces the same effect and has the same purpose, the court, at the request of the affected party, may and must, as an extension of its original decision, declare the suspension or annulment of the new act and order

the public entity to fulfill the ruling in its entirety. (...) If the following assumptions pertain, the effects of a ruling may extend to a distinct, but essentially similar, act from that originally challenged: a) if the act reproduced contains the essence of the provision or provisions suspended; b) if the reasons underlying the judicial decision have not disappeared; c) if the act reproduced has been issued by the same authority; and d) if the applicant has been party to the initial proceedings.[FN13]

[FN13] Supreme Court of Justice, Political-Administrative Chamber, Judgment N° 648 of 10 October 1996.

39. The IACHR must stress that the study of the doctrine and jurisprudence on the institution of reproduction or reissue of administrative acts appears to indicate that, in principle, extension of the suspension or nullity of the act reproduced requires a judicial declaration, since administrative acts enjoy the presumption of legality. The presumption of legality requires that all administrative acts be considered legal and valid unless declared otherwise by a court. Therefore, if an administrative act is to be deemed null, it must have been declared as such by the administrative disputes jurisdiction or its equivalent, and this requires a judicial declaration of nullity of the entire act, even if such act is a reproduction of an act already declared null and void.

40. Nevertheless, the Commission notes that the appeal for nullity is only meaningful to the extent that the administration does not continuously avoid fulfillment of the ruling, since if the administration fails repeatedly to respect the judicial decision, by constantly issuing new administrative acts, and if the interested party must enter a new objection every time, this would tend toward an interminable cycle of ineffective appeals that, far from protecting rights, would place the right to effective protection in jeopardy. Therefore, in terms of Article 25 of the American Convention, the IACHR considers that when administrative acts, once annulled, are repeatedly reissued, the presumption of legality of such acts disappears in favor of the individual's right to effective judicial protection.

41. The writer José María del Castillo Velasco notes, with respect to the limits on administrative authority, that these

are indicated by the laws, by the indisputable principles of justice and by the needs that the public power must satisfy with respect to its administration, and above all by a profound respect for liberty and the rights of the individual and of the people.[FN14]

[FN14] Del Castillo Velasco, José Maria, *Ensayo sobre el Derecho Administrativo Mexicano*, UNAM, Mexico City, 1994, page 21.

42. In light of the foregoing, the reissue of administrative acts clearly represents a failure to comply with a ruling that the State wishes to ignore.

43. The reissue of administrative acts has to do with the abuse of power, which has already been analyzed by the IACHR in previous cases, including one related to the persecution of an individual through successive inspections, the bringing of nine criminal charges, and the issuing of seven detention orders against him.[FN15] In this respect, the Commission pointed to the concept of abuse of power described by the French author Alibert, as:

[FN15] IACHR, Annual Report 1996, Report N° 43/96 – Jose Francisco Gallardo, Case 11.430 (Mexico).

The deed of an administrative agent who, acting within his competence and respecting the requirements of legislation, uses his power in cases, for reasons and purposes other than those for which that power was conferred upon him,... or to retain the form of jurisprudence, or for a purpose other than the public interest or the good of the service.[FN16]

[FN16] Alibert, *Le controle jurisdictionnel de l'Administration*, Paris, 1926, p. 236, quoted in IACHR, Annual Report 1996, Report N° 43/96, op. cit.

b. Violation of the right to judicial protection

44. Article 25 of the American Convention, quoted above, establishes the right of any person to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the Constitution or laws of the State concerned or by this Convention, and also requires that States must "insure that the competent authority shall enforce such remedies when granted."

45. The Commission considers the facts of the present case to constitute a clear violation by the Peruvian State, to the prejudice of Mr. César Cabrejos Bernuy, of the right to judicial protection enshrined in Article 25(c) of the American Convention, whereby Peru undertook to "ensure that the competent authority shall enforce such remedies when granted". In fact, although Mr. César Cabrejos Bernuy had access to a remedy that resulted in a ruling by the Supreme Court of Justice on June 5, 1992, ordering his reinstatement as a colonel in the National Police of Peru, the State failed to guarantee the enforcement of the decision.

46. The repetitions produced on December 29, 1995, and March 19, 1997, of the administrative act of July 31, 1990, whereby Mr. César Cabrejos Bernuy was sent into retirement, have prevented real execution of the judicial order for reinstatement, of June 5, 1992. Such actions imply a clear situation of repetition or reissue of an administrative act, explained above, whereby the Peruvian State, through the National Police of Peru, has evaded its duty to carry out the ruling of the Supreme Court of Justice of June 5, 1992, ordering the reinstatement of Mr. César Cabrejos Bernuy in his position as a colonel of the National Police of Peru.

47. Although subsequent to the ruling of the Supreme Court Justice the National Police of Peru issued two supreme resolutions reinstating Mr. César Cabrejos Bernuy, that reinstatement never materialized in practice, because he never returned to his position. The continued reproduction of resolutions of removal issued by the administration have constituted continuous evasion of the judicial ruling. Mr. César Cabrejos Bernuy has been obliged to take action against two identical retirement orders, and although he was successful in both cases, the State organ proceeded to issue a third resolution identical to the previous ones. The IACHR considers that it would be useless for Mr. César Cabrejos Bernuy to continue appealing this latest decision, when the administration has shown in its actions that if he did so, it would simply issue a new resolution of identical content. This attitude on the part of the National Police of Peru constitutes an affront to the judicial branch and makes it absolutely unnecessary to insist that the victim continue with judicial proceedings that, as already demonstrated, have failed to remedy his situation.

48. In this respect, it should be noted that it was precisely because of the ineffectiveness of domestic remedies that the IACHR stated in its report on the admissibility of the case that:

In the case under study, the State maintains that in order to exhaust domestic remedies the victim must attempt bring a new appeal for protection against the third retirement order. The IACHR considers this argument to be groundless. In fact, the petitioner's complaint does not refer to the third retirement order against Mr. César Cabrejos Bernuy, issued on March 26, 1997, but against the continued failure of the State to carry out the ruling of the Constitutional and Social Chamber of the Supreme Court of Justice dated June 5, 1992, which ordered his reinstatement.

(...) The Commission considers that the present case is consistent with the exception contemplated in Article 46(2)(a) of the Convention, whereby the requirement of exhaustion of local remedies called for in Article 46(1)(a) of the Convention is not applicable when "the domestic legislation of the State concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated." [FN17]

[FN17] IACHR, Report N° 75/99 – Cesar Cabrejos Bernuy, Case 11.800 (Peru)

49. The IACHR notes that the report entitled "Noncompliance with rulings on the part of the State administration" prepared by the Public Defender indicates that:

From the beginning of its functions, the Public Defender's Office has received and issued a large number of complaints against various institutions of the State that have refused to respect rulings, thereby affecting fundamental rights. In the face of this grave situation, it was decided to prepare a report on the issue, and to make specific recommendations to the State entities so that they will comply with court orders.

(...)

From the time it began to hear complaints from citizens, Sept. 11 1996, until Sept. 11 1998, the Office of the Public Defender has processed 101 complaints submitted against various State entities for failure to enforce decisions within their control. Of this high number of cases (it should be noted that in some cases a single complaint was submitted by several citizens, with various rulings in their favor), only one-quarter have been resolved satisfactorily for the citizens (24.8 percent of complaints), with full implementation of the judicial order; and in one-tenth of cases (9.9 percent of complaints), rulings have only been partially carried out. It will thus be seen that most of the cases (65.3 percent of complaints) were not resolved in a manner favorable to the citizen, despite the efforts of the Public Defender to overcome the problem.

Moreover, more than 50 percent of complaints (58 percent) relate to the disregard of judicial orders of a labor nature. Of this number, more than half refer to the failure to enforce judicial rulings ordering the reinstatement of claimants in their respective jobs.[FN18]

[FN18] Public Defender, Incumplimiento de Sentencias por parte da la Administracion Estatal, Lima, October 1998, pages 1 and 6.

c. Violation of the duty to respect and guarantee rights

50. The Commission also concludes that the violation by the Peruvian State of the right to judicial protection enshrined in the American Convention, to the prejudice of Mr. César Cabrejos Bernuy, implies violation of Article 1(1) of the American Convention, because it implies failure of the State to fulfill its obligation to respect the rights and liberties recognized in the Convention and to guarantee their full and free exercise to all persons within its jurisdiction, as established in Article 1(1) of the Convention.

V. ACTION SUBSEQUENT TO REPORT N° 4/00

51. On March 7, 2000, at its 106th regular session, the Commission adopted Report N° 4/00 (Article 50) on this case. On March 9, 2000, that report, together with the Commission's recommendations, was transmitted to the Peruvian State, which was given a period of two months from the date of transmittal of the report to comply with the recommendations thereof. The State did not report to the Commission by the established deadline on compliance with the report's recommendations.

2. Under Article 51(1) of the Convention, what the Commission must determine at this stage of the proceedings is whether the State has settled the matter. In that connection, the IACHR observes that the Peruvian State has not shown evidence of compliance with any of the recommendations made by the Commission in the aforementioned Report N° 4/00.

VI. CONCLUSION

53. For the foregoing reasons, the Commission concludes that the Peruvian State has continually failed to comply with the ruling of the Supreme Court of Justice of Peru, dated July

5, 1992, which ordered the reinstatement of Mr. César Cabrejos Bernuy to his post as a colonel in the National Police of Peru, and thereby has violated Mr. Cabrejos Bernuy's right to judicial protection, enshrined in Article 25 of the American Convention, and failed to fulfill its general duty to respect and ensure the rights of all persons subject to its jurisdiction, enshrined in Article 1(1) of the Convention.

VII. RECOMMENDATIONS

54. On the basis of the foregoing analysis and the conclusions of this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS TO THE PERUVIAN STATE THE FOLLOWING:

1. To offer adequate compensation to Mr. César Cabrejos Bernuy, pursuant to Article 63 of the American Convention, including the moral aspect as well as the material one, for the violation of his human rights, and in particular,
2. To carry out the Judicial Order issued by the Constitutional and Social Chamber of the Supreme Court of Justice on June 5, 1992, reinstating Mr. César Cabrejos Bernuy in his position as Colonel in the National Police, paying him his salary and other remuneration owing to him but not paid since the date of his enforced retirement, and granting him all other benefits to which he is entitled as a Colonel of the Police, including, as appropriate, those relating to his pension; or, as a second resort, to pay him the salary and other remuneration to which he would be entitled as a Colonel of the National Police, until he is of legal retirement age, paying also in this case his retroactive salary from the date of his forced retirement, and granting him all the other economic benefits to which, as a Colonel of the National Police, he is entitled, including, as appropriate, those relating to his pension.
3. To conduct a full, impartial, and effective investigation of the facts, in order to establish responsibilities for the failure to carry out the ruling of the Supreme Court of Justice of June 5, 1992, and to pursue such criminal, administrative, and other procedures as necessary to apply the appropriate punishment to those responsible, as befits the gravity of the violations in question.

VIII. PUBLICATION

55. On October 3, 2000 the Commission transmitted Report 60/00--the text of which precedes--to the Peruvian State and to petitioners, in accordance to Article 51(2) of the Convention, and granted Peru an additional period to comply with the recommendations set out above. On November 16, 2000, Peru forwarded the Commission a note in which did not state that it had taken any action towards compliance with the recommendations made by the Commission.

56. According to the above considerations, and Articles 51(3) of the American Convention and 48 of the Commission's Regulations, the Commission decides to reiterate the conclusion and recommendations set forth in chapters VI and VII above; to make public the present report and include it in its Annual Report to the OAS General Assembly. The Commission, according to the norms contained in the instruments which govern its mandate, will continue evaluating the

measures adopted by the Peruvian State with respect to the above recommendations until they have been complied with by the Peruvian State.

Done and signed in the city of Washington, D.C., on the 7th day of the month of March, 2001
(Signed): Claudio Grossman, Chairman; Juan Méndez, First Vice-Chairman; : Marta Altolaguirre, Second Vice-Chair; Commissioners, Robert K. Goldman, Peter Laurie, and Julio Prado Vallejo.