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Decided by:	President: Claudio Grossman; First Vice-President: Juan Mendez; Second Vice-President: Marta Altolaguirre; Commissioners: Robert K. Goldman, Peter Laurie, Julio Prado Vallejo.
Dated:	10 October 2001
Citation:	Semoza Di Carlo v. Peru, Case 12.078, Inter-Am. C.H.R., Report No. 84/01, OEA/Ser./L/V/II.114, doc. 5, rev. (2001)
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## I. SUMMARY

1. On November 12, 1998, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition lodged by Mr. Ricardo Manuel Semoza Di Carlo (hereinafter the “petitioner”) alleging that the Republic of Peru (hereinafter “Peru,” “the Peruvian State,” or “the State”) had not complied with the court order to reinstate him with the National Police of Peru. The petitioner alleges that the Peruvian State’s failure to comply with the court order constitutes a violation of the right to judicial protection enshrined in Article 25 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”).

2. The State alleges that the petition is inadmissible, as the requirement regarding exhaustion of domestic remedies has not been satisfied.

3. In keeping with Articles 46 and 47 of the American Convention, the Commission decides to declare the petition admissible with regard to facts which, if their veracity is confirmed, would constitute violations of Articles 1(1) and 25(2)(c) of the American Convention, and to proceed to examine the merits. The Commission also decides to notify the parties of this decision, to publish it, and to include it in its Annual Report to the OAS General Assembly.

## II. PROCEEDINGS BEFORE THE COMMISSION

4. The IACHR received the petition on November 12, 1998. On January 15, 1999, the IACHR forwarded the pertinent parts of the petition to the Peruvian State and requested that it

present information within 90 days. On March 17, 1999, the Commission gave the State additional time to respond.

5. On July 2, 1999, the State forwarded its reply. On August 17, 1999, the petitioner submitted observations on the State's reply and, on February 8, 2000, the State provided additional information.

6. On April 23, 2001, the Commission placed itself at the disposal of the parties with a view to reaching a friendly settlement of the matter. On May 10, 2001, the petitioner indicated his consent to participate in the friendly settlement procedure. On July 27, 2001, the State indicated that, "as these are the final days of the government overseeing the transition to democracy, it would be appropriate for the government taking power to reach a decision on a possible friendly settlement, as that new government would have responsibility for complying with the undertakings to be made."

### III. POSITION OF THE PARTIES

#### A. Position of the petitioner

7. The petitioner alleges that in 1990, he was serving as Chief of the National Police of Peru. He indicates that Supreme Resolution N° 315-90-IN-DM, of July 31, 1990, arbitrarily relieved him of duty.

8. He states that he filed a writ of amparo with the Fifth Civil Court of Lima. He states that, on December 11, 1991, that Court issued a judgment ordering his reinstatement with the National Police of Peru, and setting aside the aforementioned Supreme Resolution N° 315-90-IN-DM, which had relieved him of duty.

9. The petitioner alleges that from 1991 to 1995, he sought to have the aforementioned judgment enforced through applications to the Ministry of the Interior and writs of mandamus lodged with the competent court. He states that Supreme Resolution N° 1461, of December 28, 1995, ordered his reinstatement, but the following day, Supreme Resolution N° 1445, of December 29, 1995, again relieved him of duty.

10. Mr. Semoza Di Carlo alleges that he filed another writ of amparo, with the 19th Civil Court of Lima, and that that court, on August 22, 1996, again ordered his reinstatement with the National Police of Peru.

11. He stated that Supreme Decree N° 085/97/IN/PNP, of October 1, 1997, again ordered his reinstatement, but eight days later, pursuant to Supreme Resolution N° 0867/97/IN/PNP1445, of December 29, 1995, he was again relieved of duty, without having been effectively reinstated.

#### B. Position of the State

12. The State alleges that, through Supreme Resolution N° 085/97/IN/PNP, of October 1, 1997, Mr. Semoza Di Carlo was reinstated in the National Police of Peru. It adds that, in so doing, it complied with the court order to reinstate Mr. Semoza Di Carlo.

13. It states that on December 29, 1995, through Supreme Resolution N° 0867/97/IN/PNP1445, Mr. Semoza Di Carlo was relieved of duty with the National Police of Peru.

14. It states that Mr. Semoza Di Carlo did not take any legal action in connection with the said Supreme Resolution N° 0867/97/IN/PNP1445, of December 29, 1995, which relieved Mr. Semoza Di Carlo of duty with the National Police of Peru.

15. It alleges that, in view of the foregoing, and pursuant to the provisions of Article 46(1)(a) of the American Convention, the petition should be declared inadmissible, as the requirement regarding exhaustion of domestic remedies has not been satisfied.

#### IV. ANALYSIS OF ADMISSIBILITY

16. The Commission now proceeds to examine the requirements established in the American Convention for admissibility of a petition.

A. Competence *ratione materiae*, *ratione personae*, *ratione temporis*, and *ratione loci* of the Commission

17. The petitioner satisfies the requirements for lodging petitions with the IACHR set forth in Article 44 of the American Convention. The petition states that the alleged victim is a person whose rights, as enshrined in the American Convention, Peru undertook to respect and guarantee. As concerns the State, the Commission notes that Peru has been a State Party to the American Convention since July 28, 1978, when it deposited its instrument of ratification. Therefore, the Commission has competence *ratione personae* to examine the case.

18. The Commission has competence *ratione loci* to examine the case because the petition alleges violations of rights protected by the American Convention, which would have taken place within the territory of a State Party to that treaty.

19. The IACHR has competence *ratione temporis* as the facts alleged in the petition took place when the obligation to respect and guarantee the rights established in the Convention was in force for the Peruvian State.

20. Lastly, the Commission has competence *ratione materiae* as the petition alleges violations of human rights protected by the American Convention.

B. Requirements for admissibility of the petition

1. Exhaustion of domestic remedies

21. The petitioner alleges that the judgment of the Fifth Civil Court of Lima of December 11, 1991, ordering his reinstatement in the National Police of Peru has not been effectively enforced, as the two aforementioned resolutions of December 28, 1995 and October 1, 1997, which ordered his reinstatement, were succeeded by the two said resolutions of December 29, 1995 and October 9, 1997, which again relieved Mr. Semoza Di Carlo of duty, without having been effectively reinstated in the National Police.

22. For its part, the State alleges that the appropriate step was for the petitioner to institute further legal proceedings in connection with the third resolution ordering his retirement.

23. The IACHR finds that the aforementioned argument of the State is without substance. In fact, the petition does not refer to the third resolution, of October 9, 1997, relieving Mr. Semoza Di Carlo of duty, but rather the ongoing failure to enforce the judgment of the Fifth Civil Court of Lima, of December 11, 1991, ordering his reinstatement. That order is the one to be taken into account in analyzing the requirement of exhaustion of domestic remedies.

24. The Commission therefore considers that the requirement of Article 46(1)(a) of the American Convention has been met.

## 2. Period for lodging the petition

25. With respect to the requirement of Article 46(1)(b) of the Convention that the petition must be lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the decision that exhausted the domestic remedies, the Commission reiterates its view that:

... failure to enforce a final judgment is an on-going violation by States that persists as an infraction of Article 25 of the Convention, which sets forth the right to effective judicial protection. Therefore, in such cases, the requirement regarding the deadline for lodging a petition, set forth in Article 46(1)(b) of the American Convention, is not applicable.[FN1]

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

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26. It follows from the foregoing that the requirement involving the period for lodging petitions contained in Article 46(1)(b) of the American Convention does not apply in this case, wherein the petition lodged with the IACHR alleges the ongoing failure to enforce the judgment of the Fifth Civil Court of Lima, of December 11, 1991, ordering the reinstatement of Mr. Semoza Di Carlo with the National Police of Peru. The Commission therefore considers that the petition of reference was lodged within a reasonable period, as provided in Article 32 of its Regulations, which is equivalent in content to Article 38 of the Regulations in force at the time the petition was lodged.

## 3. Duplication of proceedings and res judicata

27. The Commission has no knowledge that the subject of the petition is pending in another international proceeding for settlement, or that it represents, from a substantive standpoint, a reproduction of an appeal already examined by the Commission or another international entity. Therefore, the Commission finds that the requirements of Article 46(1)(c) and 47(d) of the Convention have been met.

4. Characterization of the facts

28. The Commission considers that, if their veracity is confirmed, the facts alleged by the petitioners may be characterized as violations of the right to judicial protection enshrined in Article 25(2)(c) of the American Convention, and the obligation to respect rights enshrined in Article 1(1) of the said Convention.

V. CONCLUSIONS

29. The Commission concludes that it is competent to hear this case and that it is admissible under Articles 46 and 47 of the American Convention.

30. Based on the arguments of fact and law set forth above, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible with regard to facts which, if their veracity is confirmed, would constitute violations of Articles 1(1) and 25(2)(c) of the American Convention on Human Rights.
2. To notify the parties of this decision.
3. To examine the merits of the case.
4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in Washington, D.C., on this 10th day of October, 2001. (Signed): Claudio Grossman, President, Juan Méndez, First Vice-President; Marta Altolaguirre, Second Vice-President; Commissioners: Robert K. Goldman, Peter Laurie, and Julio Prado Vallejo.