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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 31/04; Petition 12.078
Session: Hundred and Nineteenth Regular Session (23 February – 12 March 2004)
Title/Style of Cause: Ricardo Manuel Semoza Di Carlo v. Peru
Doc. Type: Decision
Decided by: President: Jose Zalaquett;
Second Vice-President: Clare K. Roberts;
Commissioners: Evelio Fernandez Arevalos, Paulo Sergio Pinheiro, Freddy Gutierrez, Florentin Melendez.
Consistent with Article 17(2) of the Commission's Rules of Procedure, Commissioner Susana Villaran, of Peruvian nationality, did not participate in the discussion or in the decision on the present case.

Dated: 11 March 2004
Citation: Semoza Di Carlo v. Peru, Petition 12.078, Inter-Am. C.H.R., Report No. 31/04, OEA/Ser.L/V/II.122, doc. 5 rev. 1 (2004)

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I. SUMMARY

1. On November 12, 1998, Ricardo Manuel Semoza di Carlo (hereafter “the petitioner”) lodged a complaint against the Republic of Peru (hereafter “Peru”, “the Peruvian State”, or “the State”) before the Inter-American Commission on Human Rights (hereafter “the Inter-American Commission”, “the Commission”, or “the IACHR”). The petitioner argued that the Peruvian State had failed to comply with a court order to reinstate him with the National Police of Peru, and that the State had thereby violated his right to judicial protection, covered by Article 25 of the American Convention on Human Rights (hereafter “the American Convention” or “the Convention”).

2. On October 10, 2001, the Inter-American Commission on Human Rights adopted Report 84/01, and decided to admit the petition as it relates to the alleged violation of Articles 1(1) and 25(2)(c) of the American Convention. On March 6, 2003, the Commission adopted Report 28/03, pursuant to Article 50 of the American Convention.

3. The State declared its intention to fulfill the recommendations made by the IACHR in Report 28/03, and the parties agreed to seek a friendly settlement consistent with those recommendations. That process was monitored by the Commission. On October 23, 2003, in Lima, the parties signed a friendly settlement agreement.

4. This Friendly Settlement Report is issued pursuant to Article 49 of the Convention and Article 41(5) of the Commission's Rules of Procedure. It reviews the facts alleged by the petitioner and the terms of the friendly settlement reached, and provides for its publication.

II. PROCEEDINGS BEFORE THE COMMISSION

5. The IACHR received the petition on November 12, 1998 and on January 15, 1999, forwarded the pertinent parts of the petition to the Peruvian State. The State requested additional time to respond and, on July 2, 1999, submitted its information. 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 make any decision on a possible friendly settlement, as that new government would have responsibility for complying with the undertakings to be made."

7. By means of Report 84/01, adopted on October 10, 2001, the IACHR declared the petition admissible with respect to alleged violations of Articles 1(!) and 25(2.c) of the American Convention.

8. On October 24, 2001, the IACHR granted the petitioner a period of two months to submit his observations on the merits of the case. Consistent with Article 38(2) of its Rules of Procedure, the Commission again consulted the parties as to their interest in initiating friendly settlement procedures.

9. On December 10, 2001, the Commission received at its offices a communication from the petitioner expressing his willingness to accept a friendly settlement of the matter, and reiterating his claims as to the merits of the case, and providing additional information thereon. Subsequently, on January 15, 2002, the IACHR transmitted this communication to the Peruvian government, giving it 60 days to submit its observations. On March 19, 2002, the State requested an extension for presenting its response to the IACHR, and the latter granted an additional 30 days, from March 26, 2002.

10. On March 6, 2003, after examining the arguments of the petitioner and the State, the Commission adopted Report 28/03, pursuant to Article 50 of the American Convention. On March 18, 2003, the IACHR sent that Report to the State and requested the Peruvian government to inform the Commission, within two months, of its compliance with those recommendations. On the same date, the IACHR advised the petitioner of its adoption of Report 28/03 and requested him to submit information, within one month, relating to possible processing of the case before the Inter-American Court of Human Rights.

11. On April 17, 2003, the IACHR received additional documentary evidence provided by the petitioner, at its offices. On May 16, 2003, the State requested additional time for submitting its observations, and the IACHR granted an extension. In communications of June 11 and 12, 2003, the Peruvian State submitted information on its compliance with the recommendations made by the IACHR in Report 28/03, and requested an additional three months to provide further information. The IACHR granted an extension of three months, as of June 16, 2003, so that the State could fulfill the recommendations of Report 28/03.

12. On August 26, 2003, during a visit by Marta Altolaquirre, at that time the Commission's chair and rapporteur for Peru, a working meeting of the parties was held in the offices of the Ministry of Justice in Lima, to review the steps taken by the State in compliance with the recommendations of the IACHR, and this was followed by telephonic and electronic reports to the Commission.

13. In communications of September 16 and 22, 2003, the Peruvian State requested an additional 30 days to provide information on the case to the IACHR, and this was granted as of September 16, 2003. The State submitted documentation and the minutes of the working meeting held on September 10, 2003, with participation by the petitioner and State representatives, in which the parties declared their intention to sign a friendly settlement agreement, the contents of which were also provided. The State also sent a copy of Supreme Resolution 0501-2003-IN/PNP, of August 29, 2003, which among other things ordered the reinstatement of the petitioner in his position as Major in the National Police of Peru.

14. On October 15, 2003, the State requested more time to provide the text of the friendly settlement, which had already been signed by the petitioner and was pending signature by the ministers. The Commission granted a period of 10 days and, on October 23, 2003, the State submitted to the IACHR a copy of the Friendly Settlement Agreement and requested the Commission to ratify it pursuant to Article 49 of the Convention and Article 41(5) of the IACHR Rules of Procedure.

III. THE FACTS

15. The petitioner declares that in 1990, he was serving as Major in the National Police of Peru, and that Supreme Resolution N° 315-90-IN-DM, of July 31, 1990, arbitrarily relieved him of duty. He states that he filed a motion of amparo and that, on December 11, 1991, the Fifth Civil Court of Lima 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.

16. The petitioner declares that from 1991 to 1995, he sought to have the aforementioned judgment enforced through applications to the Ministry of the Interior and motions 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.

17. The petitioner maintains that Supreme Resolution N° 1416, of December 28, 1995, ordered his reinstatement as of December 27, 1995, but that Supreme Resolution N° 1445, of December 29, 1995, again relieved him of duty, retroactive to December 27, 1995.

18. The petitioner declares that he filed another motion 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. He states 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 October 9, 1997, he was again relieved of duty, without having been effectively reinstated.

19. The petitioner declares 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. That judgment was subsequently confirmed and a writ of mandamus was issued on July 31, 1992, by the Constitutional and Social Chamber of the Supreme Court. Yet 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 him of duty, without having been effectively reinstated in the National Police. This, he argues, constituted a violation of the right to judicial protection covered by Article 25 of the American Convention.

IV. FRIENDLY SETTLEMENT

20. The petitioner, Ricardo Semoza di Carlo, and representatives of the State, Fausto Humberto Alvarado Doderó, Minister of Justice, and Fernando Rospigliosi Capurro, Minister of the Interior, have signed a friendly settlement agreement, the text of which provides as follows:

FRIENDLY SETTLEMENT AGREEMENT

(Ricardo Semoza di Carlo – IACHR case 12.078)

This document constitutes the friendly settlement agreement in IACHR case 12.078–Peru (Ricardo Semoza di Carlo), negotiated before the Inter-American Commission on Human Rights, and signed by the Peruvian State, duly represented by Fausto Humberto Alvarado Doderó, Minister of Justice, and Fernando Rospigliosi Capurro, Minister of the Interior, and by the petitioner, Ricardo Semoza di Carlo, with CIP No. 160714, residing at Pasaje Durand Bernales 145, Apartment No. 411, Barrio Medico, Surquillo District.

This agreement includes the following terms and conditions:

ONE: BACKGROUND

On November 12, 1998, Ricardo Semoza di Carlo lodged a complaint before the Inter-American Commission on Human Rights, alleging that the Peruvian State had failed to comply with a court order to reinstate him with the National Police of Peru, and that the State had thereby violated his right to judicial protection, covered by Article 25 of the American Convention on Human Rights

PNP Major Ricardo Semoza di Carlo was reinstated in the National Police of Peru by Resolution 851-97-IN/PNP of October 1, 1997, and was subsequently again relieved of his duties by Resolution 867-97-IN/PNP, of October 9, 1997.

During its 113th regular session, the Inter-American Commission adopted Report 84/01 of October 10, 2001, declaring the present case admissible with respect to the alleged violations of Articles 25 and 1(1) of the American Convention. During its 117th regular session, and in accordance with Article 50 of the Convention, the IACHR adopted Confidential Report No. 28/03 of March 6, 2003, in which it concluded that the Peruvian State was responsible for violating the right to judicial protection enshrined in Article 25(c) of the American Convention, to the prejudice of Mr. Ricardo Semoza di Carlo, and that this also constituted a violation of the obligation to respect and guarantee the rights protected by the Convention, imposed by Article 1(1).

Supreme Resolution 0501-2003-IN/PNP of August 29, 2003, set aside Supreme Resolution 0867-97-IN/PNP of October 1, 1997, which had renewed the removal of Mr. Ricardo Semoza di Carlo from his duties as Major in the National Police of Peru. It also ordered his reinstatement, pursuant to judicial order, in the National Police of Peru, with recognition of the rights and prerogatives attendant upon his rank.

The PNP Major was also ordered reinstated in the Personnel Roster of National Police Officers, in the corresponding position. It has also been arranged that PNP Major Ricardo Semoza di Carlo must reimburse the State for all the economic benefits that were granted him as a result of his removal from duty, plus legal interest.

TWO: RECOMMENDATION

Mindful that unqualified protection of and respect for human rights is the foundation of a just, decent and democratic society, in strict compliance with the obligations undertaken with signature and ratification of the American Convention on Human Rights and other international human rights instruments to which Peru is party, and conscious that any violation of an international obligation that has resulted in damages or injury carries with it the duty to make adequate reparation, which in the instant case means restoring the victim to his post, the State acknowledges its responsibility for violation of Articles 1(1) and 25 of the American Convention on Human Rights, to the detriment of Ricardo Semoza di Carlo.

THREE: COMPENSATION

The Peruvian State grants the following benefits to the petitioner as compensation:

- a) Recognition of the time that he was arbitrarily separated from the institution, as real and effective time, and of the consequent prerogatives and rights inherent in his rank, pursuant to decision No. 2 of Report 28/03 of the Inter-American Commission on Human Rights, including the financial benefits flowing therefrom, which does not imply the payment of wages and other remuneration forgone since the date of his removal from duty.

- b) Immediate reinstatement in the Superior School of the National Police of Peru (ESUPOL), so that he may continue the senior course for PNP Majors and Commanders that he was taking at the time he was relieved of his duties.
- c) Regularization of pension rights, as of the date of his reinstatement, taking into account the new calculation of his time in service.
- d) Refund of the officers' retirement insurance (FOSEROF, AMOF etc.) by virtue of Article 4 of Supreme Resolution 0501-2003-IN/PNP of August 29, 2003.
- e) A public ceremony will be held.

FOUR: RENUNCIATION OF FINANCIAL COMPENSATION

The petitioner claimed compensation in the amount of \$100,000, but considering the current situation of the national treasury, and declaring that he places the interests of the State before his own economic claims, Ricardo Semoza di Carlo has been inspired by the mystique and vocation of service as a Major in the PNP, which constitute the *raison d'être* of any officer of the National Police of Peru, and despite his financial situation, he expressly renounces any monetary compensation, considering that his reinstatement in the police force is of special ethical value and greater than any material reward.

FIVE: INVESTIGATION AND PROSECUTION

The Peruvian State will undertake an exhaustive investigation of the facts and will prosecute any person found to have participated in the deeds of this case. For this purpose, an Ad Hoc Commission will be established by the Office of International Affairs and the Legal Advisory Services of the Ministry of the Interior, in order to identify and establish the responsibility of officials of the Interior Sector who failed to comply in a timely manner with the court order, or who participated in the violation of the rights of judicial protection involving the reinstatement of Ricardo Manuel Semoza di Carlo to active police service.

SIX: RIGHT TO BRING ACTION

The Peruvian State reserves its right, under the laws currently in effect, to bring action against those persons whom the competent national authority finds to be the responsible parties in the instant case.

SEVEN: LEGAL BASIS

This agreement is signed pursuant to Articles 2(1), 44, 55, 205, and the Fourth Final and Transitional Provision of the Political Constitution of Peru; Articles 1205, 1306, 1969, and 1981 of the Peruvian Civil Code; Articles 1, 2, and 48(1)(F) of the American Convention on Human Rights, and Article 41 of the Rules of Procedure of the Inter-American Commission on Human Rights.

EIGHT: INTERPRETATION

The meaning and scope of this agreement shall be interpreted in accordance with Articles 29 and 30 of the American Convention on Human Rights, as applicable, and with the principle of good faith. In the case of doubt or disagreement between the parties as to the contents of this agreement, the interpretation will be decided by the Inter-American Commission on Human Rights. The Commission shall also oversee its compliance, and the parties are obliged to report every three months on the status of such compliance.

NINE: RATIFICATION

The parties undertake to bring this friendly settlement agreement to the attention of the Inter-American Commission on Human Rights, so that the latter might confirm and ratify it in all its parts.

TEN: ACCEPTANCE OF TERMS

The parties signing this agreement state that of their own free will they agree with and accept the terms of each and every clause of this agreement, and expressly stipulate that this agreement settles the dispute between them and any claim concerning the Peruvian State's international responsibility for the human rights violations of which PNP Major Ricardo Semoza di Carlo was victim.

Signed in quadruplicate, in the city of Lima, the twenty-third day of the month of October in the year two thousand three.

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

21. The IACHR observes that under Articles 48(1)(f) and 49 of the Convention, this procedure is done "with a view to reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention." The State's consent to pursue this avenue is evidence of its good faith to honor the Convention's purposes and objectives, based on the principle of *pacta sunt servanda*. According to that principle, States must perform the obligations undertaken in treaties in good faith. The IACHR also wishes to point out, once again, that with the friendly settlement procedure provided for in the Convention, individual cases can be settled in a non-contentious manner. In cases involving a number of countries, the friendly settlement arrangement has proven to be a useful vehicle that both parties can use to advantage.

22. The Inter-American Commission has closely monitored the development of the friendly settlement arrived at in the present case. The Commission greatly appreciates the efforts that both parties made to reach this settlement, which is compatible with the object and purpose of the Convention.

VI. CONCLUSIONS

23. For all the foregoing reasons and in keeping with the procedure provided for in Articles 48(1)(f) and 49 of the American Convention, the Commission would like to state that it is very

grateful for the efforts made by the parties and is pleased that the friendly settlement arrived at in the present case is consistent with the object and purpose of the American Convention.

For the reasons and based on the conclusions explained in this Report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To approve the terms of the friendly settlement agreement that the parties signed on October 23, 2003.
2. To continue to monitor and supervise each and every point of the friendly settlement agreement; accordingly, to remind the parties of their obligation to report to the IACHR every three months on the performance of this friendly settlement.
3. To make the present report public and include it in the Commission's Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C., this 11 day of the month of March in the year 2004. (Signed): José Zalaquett, President; Clare K. Roberts, Second Vice President; and Commissioners Evelio Fernández Arévalos, Paulo Sergio Pinheiro, Freddy Gutiérrez y Florentín Meléndez.