

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 49/06; Petition 12.033
Session:	Hundred Twenty-Fourth Session (27 February – 17 March 2006)
Title/Style of Cause:	Romulo Torres Ventocilla v. Peru
Doc. Type:	Decision
Decided by:	President: Evelio Fernandez Arevalos; First Vice-President: Paulo Sergio Pinheiro; Second Vice-President: Florentin Melendez; Commissioners: Clare K. Roberts, Freddy Gutierrez Trejo, Paolo Carozza, Victor E. Abramovich.
Dated:	15 March 2006
Citation:	Torres Ventocilla v. Peru, Petition 12.033, Inter-Am. C.H.R., Report No. 49/06, OEA/Ser.L/V/II.127, doc. 4 rev. 1 (2006)
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I. SUMMARY

1. In a petition received by the Inter-American Commission on Human Rights (hereinafter “the IACHR” or “the Commission”) on June 29, 1998, Mr. Rómulo Torres Ventocilla (hereinafter “the petitioner”) claimed that the Republic of Peru (hereinafter “Peru,” “the State,” or “the Peruvian State”) violated his right to a fair trial, to freedom from ex post facto laws, to privacy, to political rights, to equality before the law, and to judicial protection, enshrined respectively in Articles 8, 9, 11, 23, 24, and 25 of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”), in conjunction with Article 1.1 of the same international instrument. The reported violations are related to the alleged victim’s groundless dismissal from his position as a Civil Judge in Lima on April 24, 1992, under the terms of Decree Law No. 25446, enacted by the de facto Emergency and National Reconstruction Government established earlier that year.

2. The petitioner informs the Commission that under said decree, the Peruvian government dismissed superior court prosecutors and magistrates, and first-instance judges and prosecutors, without grounds or legal cause. These steps paralyzed the administration of justice and temporarily suspended judicial process. He also reports that on April 28, 1992, Decree Law No. 25454 was enacted, which declared inadmissible the amparo relief suit lodged to challenge the effects of Decree Law No. 25446 and others. Irrespective of this, the petitioner filed an amparo action, which was subsequently ruled inadmissible by all venues of the Peruvian judiciary, including the Constitutional Court in a judgment dated October 27, 1997.

3. This friendly settlement report, pursuant to the terms of Article 49 of the American Convention on Human Rights and Article 41.5 of the Rules of Procedure of the Inter-American

Commission on Human Rights (hereinafter “the Rules of Procedure”), contains a summary of the IACHR’s processing of the petition and of the claims made by petitioner, and it provides a transcription of the Friendly Settlement Agreement of February 9, 2006. In addition, it accepts the Agreement as signed by the parties and agrees on the publication of this report.

II. PROCESSING BY THE COMMISSION

4. On July 16, 1998, the Commission registered the complaint lodged by Mr. Rómulo Torres Ventocilla, and assigned it the case number 12.033. On that same date, it forwarded the relevant parts of the complaint to the Peruvian State and asked it to provide information on the matter within the following 60 days.

5. On February 22, 2001, the State signed a joint press release with the IACHR, including this petition among the “cases in which the State will promote a friendly settlement in keeping with the provisions of Articles 48.1.f and 49 of the American Convention.” The State’s willingness to work toward a friendly settlement in the case of Rómulo Torres was ratified at the hearing held before the IACHR on March 2, 2001.

6. As part of the negotiations toward a friendly settlement, with Administrative Resolution No. 098-2002-CE-PJ of July 5, 2002, the Executive Council of the Judiciary ordered that Dr. Rómulo Torres Ventocilla be reinstated in his position as Civil Judge of the Superior Court of Justice of Lima.

7. The IACHR held working meetings with the parties on October 14, 2002, and February 28, 2003, and, on the latter occasion, the State offered the petitioner the amount of USD \$40,000 to cover material damages, moral damages, and costs. At a working meeting held during a visit made by the IACHR’s Rapporteur for Peru, Commissioner Marta Altolaguirre, on August 26 to 30, 2003, the State confirmed the terms of its offer, which was accepted by the petitioner with a request that the time during which he was suspended from duty be calculated and included for all employment purposes.

8. On July 9, 2004, a ceremony was held at the headquarters of the Ministry of Justice during which the Government of Peru extended Dr. Rómulo Torres Ventocilla a public apology. Additionally, in a resolution issued during the meeting of the Executive Council of the Judiciary on September 17, 2004, an order was issued for the recognition, for the purposes of pension entitlements and seniority in his position as magistrate, of the time that Mr. Rómulo Torres Ventocilla was suspended from the judiciary as a result of his arbitrary dismissal: in other words, the period from April 24, 1992, the date he was arbitrarily suspended from his duties as a magistrate, to July 25, 2002, the date of his actual reinstatement in that position.

9. In pursuit of their negotiations for the terms of the friendly settlement agreement, the parties held working meetings during the IACHR’s 121st and 122nd sessions.

10. Finally, in a note of February 14, 2006, the State submitted a copy of the friendly settlement agreement signed by the parties on February 9, 2006. A copy of this agreement was

sent to the IACHR by Dr. Rómulo Torres Ventocilla's representative, requesting that the corresponding report be issued.

III. FACTS

11. According to the complaint, on April 5, 1992, President Alberto Fujimori declared his "self-coup," whereby he violated the rule of law and, through various legal provisions, dissolved the National Congress, the Court of Constitutional Guarantees, and the National Council of the Magistrature. He also dismissed supreme prosecutors and magistrates, superior court prosecutors and magistrates, first-instance judges and prosecutors, and career diplomats.

12. The sole article of Decree Law No. 25446, published in the official journal *El Peruano* of April 24, 1992, ordered the dismissal of superior court prosecutors and magistrates and of first-instance judges and prosecutors. These steps paralyzed the administration of justice in Peru, temporarily suspended judicial process, and used force to prevent magistrates, other officials, and litigants from entering judicial premises.

13. Dr. Rómulo Torres Ventocilla claimed that on April 24, 1992, under the terms of this Decree Law, he was dismissed from his position as a civil judge in Lima, with no motivation, grounds, or legal cause whatsoever.

14. He also said that on April 28, 1992, Decree Law No. 25454 was enacted, ruling inadmissible the amparo relief that was filed to challenge the effects of Decree Laws 25442, 25423, and 25446, and thus depriving the dismissed magistrates of that remedy and of any form of defense from the attack they had suffered.

15. In spite of the express ban imposed by Decree Law No. 25454, the petitioner states that he lodged an amparo filing with the 20th Civil Court of Lima, seeking to have Decree Laws 25446 and 25454 ruled inapplicable. He also requested that, once his appeal was admitted, he be reinstated in the position he held prior to the entry into force of the first of those decrees.

16. Dr. Rómulo Torres Ventocilla claimed that with the rejection of his amparo by all the competent judicial venues – namely, the first-instance court, the Superior Court, and the Supreme Court – he exhausted the domestic legal remedies that existed. In connection with this, he points out that the first-instance judge who originally heard his amparo suit was criminally prosecuted by the State for the crime of perverting the course of justice by having accepted the remedy for processing.

17. Because of this, the petitioner appealed to the Constitutional Court which, in a judgment of October 27, 1997, upheld the resolution adopted by the Constitutional Law Chamber of the Supreme Court and consequently declared the amparo suit lodged by Dr. Torres Ventocilla to be inadmissible. According to the complaint, the judgment of the Constitutional Court was published in the official journal *El Peruano* of January 9, 1998, and notice of it was served on the petitioner on February 27 of that same year.

IV. FRIENDLY SETTLEMENT

18. The State and the petitioners signed a friendly settlement agreement, the text of which reads as follows:

ONE: BACKGROUND

1. Magistrate Rómulo Torres Ventocilla was dismissed from his position as a Lima Civil Judge on April 24, 1992, under Decree Law 25446 (see Annex 1), enacted by the Emergency and National Reconstruction Government.

2. He lodged a filing for amparo relief on July 20, 1992, with the 20th Civil Court of Lima, seeking to have D.L. 25446 – which removed all first-instance magistrates and other officials from their positions – ruled inadmissible. After admitting this suit for processing, the judge was prosecuted for perverting the course of justice under D.L. 25454 (see Annex 2), which established the inadmissibility of amparo actions brought against D.L. 25446. The action was declared inadmissible by all the venues of the judiciary. The Constitutional Court, in a judgment of October 27, 1997 (published in the official journal *El Peruano* on January 9, 1998, and notified on February 27, 1998) upheld the supreme deed of execution declaring the amparo filing inadmissible, under D.L. 25454. With this, domestic jurisdiction was exhausted.

The Inter-American Commission on Human Rights (IACHR), in a note dated July 16, 1998, informed the Peruvian State of Dr. Rómulo Torres Ventocilla's complaint. In that filing, the petitioner stated that "the Peruvian State has violated Articles 8 (right to a fair trial), 9 (freedom from ex post facto laws), 11 (right to privacy), 23 (political rights), 24 (equal protection), and 25 (judicial protection) of the American Convention on Human Rights" (emphasis added).

3. On February 22, 2001, the Peruvian State signed a Joint Press Release with the Inter-American Commission on Human Rights (see Annex 3), paragraph (a) of which stated its commitment toward promoting friendly settlements, pursuant to Articles 48(1)(f) and 49 of the American Convention on Human Rights, in a number of cases, including case No. 12.033, Rómulo Torres Ventocilla.

4. Administrative Resolution No. 098-2002-CE-PJ (see Annex 4) of July 5, 2002, ordered that "Dr. Rómulo Torres Ventocilla be reinstated in his position as Full Civil Judge of the Superior Court of Justice in Lima."

5. In Administrative Resolution No. 249-2002-P-CSJL/PJ (see Annex 5) of July 22, 2002, the President of the Superior Court of Justice of Lima ordered that "Doctor RÓMULO TORRES VENTOCILLA, Full Civil Judge, be reinstated by the Executive Council of the Judiciary, as the 66th Civil Court of Lima as of July 25, 2002, replacing Dr. Roxana Chabela Carrión Ramírez."

6. On July 9, 2004, the Ministry of Justice held, at the ministry's auditorium, at 11:15 am, a public ceremony of apology toward Dr. Rómulo Torres Ventocilla; invitations to this event were extended to authorities of the judiciary, the National Council of the Magistrature, the Constitutional Court, the National Elections Jury, as well as friends and relatives of the petitioner.

7. The Executive Council of the Judiciary, by means of Deed No. 4082-2004-CE-PJ (see Annex 6) of October 22, 2004, submitted a certified copy of the resolution issued during the session of September 17, 2004, related to the IACHR's Case No. 12.033, Rómulo Torres Ventocilla. That resolution provides that: "Recognize, for the purposes of pension entitlements and seniority in the position of Magistrate that he holds, the time that Mr. Rómulo Torres Ventocilla was separated from the judiciary as a result of his arbitrary dismissal" (emphasis added). This recognition covers the period of time between April 24, 1992, the date on which he was arbitrarily suspended from his duties as a magistrate, to July 25, 2002, the date of his actual reinstatement in that position.

8. In addition, the resolution ruled the petition inadmissible as regards the claim for compensation for service time, without prejudice to Dr. Torres Ventocilla's right to assert his claim in accordance with law through the appropriate channels.

9. On March 9, 2005, the National Council of the Magistrature (CNM) forwarded to this Executive Secretariat Deed No. 389-2005-CNM, conveying Resolution No. 606-2005-CNM of March 8, 2005 (see Annexes 7 and 8). That resolution provided that: "One: To declare that the title of Full Civil Judge of the Superior Court of Justice of Lima extended to Dr. ROMULO TORRES VENTOCILLA has been reinstated" (emphasis added).

10. On December 29, 2005, the official journal El Peruano published Supreme Resolution No. 271-2005-JUS (see Annex 9): "Minister of Justice is authorized to sign friendly settlement agreement in IACHR case No. 12.033" (emphasis added).

11. As regards the economic compensation due to Dr. Torres Ventocilla: On March 17, 2005, by means of Informative Note No. 017-2005-JUS-CNDH-SE, the Executive Secretariat of the National Human Rights Council conveyed to the then Vice Minister of Justice and President of the National Human Rights Council, Dr. Gianna Macchiavello Casabonne, the Report on the 122nd Regular Period of Sessions of the Inter-American Commission on Human Rights (IACHR).

This document, referring to the fourth working meeting held on March 2, 2005, on Case No. 12.033, Rómulo Torres Ventocilla, said that: "the delegation repeated, as it had done at the previous session, that in 2003 the State had agreed before the IACHR to extend full compensation in the amount of USD \$40,000.00 (forty thousand U.S. dollars)" (see Annex 10).

12. Currently, Dr. Rómulo Torres Ventocilla is serving as a member of the Superior Court of Justice of Huaura, to which position he was promoted following a public competition by National Council of the Magistrature Resolution No. 430-2005-CNM of February 16, 2005 (see Annex 11).

TWO: RECOGNITION OF INTERNATIONAL RESPONSIBILITY

The Peruvian State, aware that the protection of and unrestricted respect for human rights is the basis of a just, decent, and democratic society, in strict compliance with the obligations it

assumed by signing and ratifying the American Convention on Human Rights and the other international human rights instruments to which Peru is a party, and aware that any violation of an international obligation that has caused damage triggers the duty to make adequate amends, recognizes its responsibility under Articles 8(1), 11, 23(1)(c), 24, and 25(1) of the American Convention on Human Rights, for the harm caused to Rómulo Torres Ventocilla during the period from April 24, 1992, the date on which he was arbitrarily dismissed, and July 25, 2002, the date of his actual reinstatement in judicial service.

THREE: COMPENSATION

3.1 The Peruvian State acknowledges the petitioner's entitlement to a payment in the amount of \$40,000.00 (forty thousand U.S. dollars) as full compensation for lost earnings, consequential damages, and moral damages, this being monetary amends. This is on account of the responsibility described in the second clause of this friendly settlement agreement and in consideration of the particular circumstances of his dismissal and other facts set out in the first clause of this document.

3.2 The beneficiary agrees to make no other claim, either directly or indirectly (except as detailed below) through any other channels, nor to subpoena the Peruvian State, as having joint responsibility and/or civil liability as a third party or in any other form, in connection with his arbitrary dismissal of April 24, 1992. The sole exception shall be the unaffected right of Magistrate Rómulo Torres Ventocilla to take action to claim his Compensation for Service Time, pursuant to law and through the competent venues.

FOUR: EXEMPTION FROM TAXES; COMPLIANCE AND DELAYS

The amount of compensation extended by the Peruvian State shall be subject to no tax, contribution, or levy, either currently existing or created in the future, and shall be paid no later than six months after the Inter-American Commission on Human Rights has given notice of its approval of this agreement, on which date it shall be considered past due and the maximum compensatory or moratory interest rate provided for and/or permissible by in national law shall apply.

FIVE: RIGHT OF ACTION FOR RECOVERY

The Peruvian State reserves the right to recovery with respect to those persons identified as having responsibility in the case at hand, in accordance with the legislation in force.

SIX: END OF DISPUTE

By means of this Friendly Settlement Agreement, the Peruvian State and the petitioner, Dr. Rómulo Torres Ventocilla, express their free and voluntary acceptance of the compensation described in clause three. In addition, the parties end the dispute and any other claim regarding the international responsibility of the Peruvian State for the violation that, following his dismissal from his duties as a Civil Judge in Lima, affected the human rights of Dr. Torres Ventocilla.

SEVEN: LEGAL BASIS

This Agreement is signed in accordance with the terms of Articles 1, 2 (paragraphs 2 and 7), 44, 55, and 205, and the Fourth Final and Transitory Provision of the Constitution of Peru, Articles 1, 2, 8(1), 11, 23(1)(c), 24, 25(1), 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 content and scope of this agreement shall be interpreted in light of Articles 29 and 30 of the American Convention on Human Rights, as applicable, and in accordance with the principle of good faith. Should there be any doubt or disagreement between the parties regarding the content of this agreement, the Inter-American Commission on Human Rights shall decide on its interpretation.

NINE: APPROVAL BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

The parties hereto agree to inform the Inter-American Commission on Human Rights of this Friendly Settlement Agreement so that it can adopt a report on the document as analyzed, in compliance with Articles 48(1)(f) and 49 of the American Convention on Human Rights and Article 41 of the Rules of Procedure of the Inter-American Commission on Human Rights, immediately following its execution by the parties.

TEN: ADOPTION

The parties involved in the execution of this Agreement express their free and voluntary compliance with and acceptance of the content of each and every one of its clauses, and expressly state that it concludes the dispute and claim regarding the international responsibility of the Peruvian State for the violation of Mr. Rómulo Torres Ventocilla's human rights. Signed in four original copies, in the city of Lima, on the ninth day of February, two thousand and six.

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

19. The IACHR again notes that pursuant to Articles 48.1.f and 49 of the Convention, the aim of this procedure is "reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention." Accepting this procedure demonstrates the State's good faith in pursuit of the Convention's purposes and goals under the principle of *pacta sunt servanda*. It would also like to note that the friendly settlement procedure provided for in the Convention allows individual cases to be concluded in a noncontentious fashion and that in cases from several different countries, it has served an important vehicle for resolving disputes that is available to either party.

20. The Commission observes that the second clause of the Friendly Settlement Agreement recognizes the responsibility of the State for the violations committed with respect to Rómulo Torres Ventocilla during the period from April 24, 1992, the date on which he was arbitrarily

dismissed, and July 25, 2002, the date of his actual reinstatement in the judicial service. In this regard, the Commission values the Peruvian State's recognition of its responsibility for failing to abide by its international obligations vis-à-vis the rights enshrined in Articles 8.1, 11, 23.1.c, 24, and 25.1 of the American Convention on Human Rights. Additionally, in the opinion of the IACHR, this acknowledgement has full legal merit under principles of international law.[FN1]

[FN1] See, inter alia: Permanent Court of International Justice, 1933, P.C.I.J., Ser A/B No. 53, 71 (Norway v. Denmark).

21. The Inter-American Commission has closely followed the development of the friendly settlement reached in this case. The Commission highly appreciates the efforts of both parties in reaching this settlement and declares that it is compatible with the purpose and goals of the Convention.

VI. CONCLUSIONS

22. Based on the foregoing considerations and under the procedure set forth in Articles 48.1.f and 49 of the American Convention, the Commission would like to reiterate its deepest appreciation of the efforts made by the parties and its satisfaction at the realization of the friendly settlement agreement in the case at hand, based on the purpose and goals of the American Convention.

23. By virtue of the considerations and conclusions set forth in this Report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To approve the terms of the Friendly Settlement Agreement signed by the parties on February 9, 2006.
2. To continue with its monitoring and supervision of each and every point in the Friendly Settlement Agreement; and, in this context, to remind the parties of their commitment to report back to the IACHR every three months on compliance with this friendly settlement.
3. To publish this report and to include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 15th day of the month of March, 2006. (Signed): Evelio Fernández Arévalos, President; Paulo Sérgio Pinheiro, First Vice-President; Florentín Meléndez, Second Vice-President; Clare K. Roberts, Freddy Gutiérrez Trejo, Paolo Carozza and Víctor E. Abramovich, Commissioners.