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Decided by: President: Florentin Melendez;
First Vice-President: Paolo Carozza;
Commissioners: Clare K. Roberts, Freddy Gutierrez, Evelio Fernandez Arevalos.
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Represented by: APPLICANT: the Asociacion Pro Derechos Humanos
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I. SUMMARY

1. The Inter-American Commission on Human Rights (hereinafter “the Commission,” “the IACHR,” or “the Inter-American Commission,” received a petition on August 5, 1999, lodged by the Asociación Pro Derechos Humanos (APRODEH) [Association for Human Rights] (hereinafter “the petitioners”), on behalf of Mr. José Antonio Aguilar Angeletti (hereinafter “the alleged victim”), against the State of Peru (hereinafter “the State” or “the Peruvian state) for the alleged violation of the right to due process and to stability in service as a tenured judge in the Judiciary of Peru, allegedly carried out by the Peruvian Supreme Court and Constitutional Court, in the ruling of January 21, 1999 handed down by the latter vacating the amparo petition [for protection of fundamental rights] lodged by Mr. Aguilar Angeletti for his reinstatement as Superior Judge, tenured, of Amazonas.

2. The petitioner alleges that the State is responsible for the violation of Articles 8 (right to a fair trial), 9 (freedom from ex post facto laws),[FN1] 24 (right to equal protection), and 25 (judicial protection) of the American Convention on Human Rights (hereinafter the “Convention” or the “American Convention”). The State, for its part, contended that domestic remedies had not been duly exhausted by the petitioner, in accordance with the provisions of Article 46(1)(a) of the American Convention, since the amparo petition was untimely and hence denied. In this connection, the State contends that the Constitutional Court had acted within its sphere of competence, and had applied the procedural requirements mandated by law for the admission of amparo petitions.

[FN1] Petitioners’ August 29, 2005 communication.

3. In this report, the Commission analyzes available information in the light of the provisions of the American Convention and concludes that the petition does not establish a possible violation of rights guaranteed by same. Therefore, pursuant to Article 47(b) of the American Convention, the IACHR decides that the petition is inadmissible; it further decides to transmit the report to the parties, to publish it, and to order that it be included in its Annual Report.

II. PROCESSING BEFORE THE COMMISSION

4. The IACHR received the petition, dated July 23, 1999, on August 5, 1999. The IACHR began its examination of Case No. 12.217 on October 28, 1999, and forwarded the relevant parts of the complaint to the State, granting it 90 days to submit observations, pursuant to the IACHR's Rules of Procedure then in force.

5. On February 10, 2000, in response to a request for an extension made by the Peruvian state, the IACHR granted an additional 30 days to the State to submit its observations. The State submitted its response on March 14, 2000, which the Commission then forwarded to the petitioners.

6. In an April 14, 2000 communication, the petitioners submitted their observations with respect to the information provided by the State. These observations were forwarded to the State on the same day. The State, in a June 8, 2000 communication, requested an extension of the time period to submit its observations. The IACHR, on July 24, 2000, granted a 30 day extension to the State to submit its observations.

7. The State presented its response to the information submitted by the petitioners on August 24, 2000. This response was then forwarded to the petitioners. For their part, the petitioners presented their observations and appended additional information in an October 11, 2000 communication, received by the Executive Secretariat of the IACHR on October 16, 2000.

8. The petitioners, in communications of August 6, 2001, March 24, 2002, November 4, 2002, and May 7, 2003, expressed their intention of reaching a friendly settlement of the matter. The Commission, in an April 20, 2003 communication, placed itself at the parties' disposal in order to reach a friendly settlement, pursuant to Article 48(1)(f) of the Convention. The State did not provide a response regarding the possibility of arriving at a friendly settlement of the case.

9. The petitioners, in a September 21, 2004 communication, received by the IACHR on September 30, 2004, requested that the IACHR continue with the processing of the case in accordance with the provisions of the Inter-American Convention on Human Rights and of the IACHR's Rules of Procedure, given that the State had not responded to the offer for a friendly settlement. In a March 21, 2005 communication, the petitioners reiterated their position.

10. The IACHR requested updated information from the State on June 3, 2005. On July 14, 2005, the State submitted report 99-2005-JUS/CND-SE/CESAPI, which was forwarded to the

petitioners. The petitioners submitted their observations to the IACHR in an August 29, 2005 communication.

III. POSITIONS OF THE PARTIES

A. The petitioners

11. The petitioners assert that on April 5, 1992, the incumbent president of Peru announced the forming of a “Government of National Emergency and Reconstruction,” thus breaking with the 1979 Constitution, until then in force. Two days after this event, the petitioners contend, the Ley de Bases del Gobierno de Emergencia y Reconstrucción Nacional [Fundamental Law of the Government for Emergency and Reconstruction] (Decree No. 25418). Among other purposes of this law, one was to reform the Judiciary.[FN2]

[FN2] Original July 23, 2005 complaint, submitted to the IACHR Executive Secretariat by the Asociación Pro Derechos Humanos on August 5, 1999.

12. The petitioners state that, on April 24, 1992, Executive Decree No. 25446 was issued, dismissing 104 judges of the Judiciary and 30 prosecutors, with no cause given for the dismissals. The Decree also provided for the creation of a “Commission for the Evaluation of the Judiciary,” charged with carrying out procedures of “investigation and sanction of the judges’ official conduct.”[FN3] The petitioners further argue that due to changes in the structure of the Judiciary, and a change in the composition of the Supreme Court, the latter issued an administrative decision ordering the permanent dismissal of the alleged victim from his position of Vocal Superior Titular [Superior Permanent (tenured) Judge] of the Judicial District of Amazonas.[FN4]

[FN3] The petitioners state that on April 25, 1992 Law No. 25447 was enacted, providing that any amparo petition filed to challenge, directly or indirectly, the effects of the application of Law No. 25446 (establishing the Commission for the Evaluation of the Judiciary) would henceforth be invalid.

[FN4] Ibid.

13. The petitioners contend that said decision is absolutely null, given that it does not include the aforementioned final report of the Commission for Evaluation that, according to the petitioners, was never prepared. The petitioners moreover argue that the inexistence of the final report of the Commission for Evaluation was proven in court. In addition, they state that the aforementioned decision lacked any justification, was contradictory, invoked a suspended law, and was issued in the context of a process lacking in judicial guarantees, such as the right to defense and to an impartial judge, because, according to the petitioners, the members of the Commission acted both as judges and parties in said procedure.[FN5]

[FN5] Ibid.

14. The petitioners affirm that Mr. José Antonio Aguilar Angeletti, on July 23, 1992, filed an appeal before the Supreme Court for a reversal of its administrative decision, stating as his residence the Department of Amazonas. They also affirm that during the time lapsed between the filing of the appeal until it was decided, there were important legislative changes to the benefit of the alleged victim regarding the time periods within which administrative authorities should decide the appeal and the administrative deadlines within which appeals challenging said decisions could be filed.

15. In this connection, the petitioners state that, at the time of the filing of the appeal for reversal before the Supreme Court, Decreto Supremo [Supreme Decree] No. 006-67-SC of November 11, 1967, was in force. Articles 53 and 90 of said decree provided that the appropriate administrative authority had no more than six months to hand down a decision. This time period was applicable to the Supreme Court in the case at issue.[FN6] The lack of a response from the authorities within this time consequently entailed an automatic denial by the State, and the possibility for the appellant to seek recourse in court to challenge the decision; the corresponding time periods to file motions would then begin to run after those six months.

[FN6] Petitioners' April 14, 2000 communication.

16. The petitioners, however, state that said legal situation was modified by the publication of Law No. 26111 of December 30, 1992. This new law modified Article 90 of the aforementioned Supreme Decree No. 006-67-SC, establishing the possibility for the appellant to wait for an express decision by the administration. The petitioners affirm that subsequently the Texto Único Ordenado de la Ley de Normas Generales de Procedimientos Administrativos [Single Unified Text of the Law on General Rules of Administrative Procedure] of January 31, 1994, was passed, and its Article 98 provided that, once an appeal for reversal had been filed, the appellant could await the express decision made by the respective organ of public administration. They add that this law was later modified by Law No. 26810 of June 13, 1997, but the same legal possibility to await a decision from the public administration organ was kept in the new text.[FN7] In this connection, the petitioners stress that said rules are applicable to the case of Mr. Aguilar Angeletti.

[FN7] Petitioners' April 14, 2000 communication.

17. The petitioners contend that the alleged victim, in an attempt to have a decision handed down on his appeal for reversal, in the months of February and March, 1996, undertook intense efforts in this regard before the Supreme Court, including the filing of written petitions,

interviews with the head of the front desk and with the clerk, as well as a meeting with the president of the Court.[FN8]

[FN8] Ibid.

18. The petitioners state that after the aforementioned steps taken by them, on March 26, 1996, the alleged victim was notified of the denial of his appeal, issued on July 27, 1992. In this respect, the petitioners state that once the appeal for reversal was decided, Mr. Aguilar Angeletti was not notified until he requested notice, as mentioned above, on March 26, 1996. However, the petitioners state that on April 22, 1996, the alleged victim, after being served notice of the denial of his appeal for reversal, filed an amparo petition before the appropriate courts, in accordance with the Peruvian legislative standards then in force.[FN9]

[FN9] Original July 23, 2005 complaint, submitted to the IACHR Executive Secretariat by the Asociación Pro Derechos Humanos on August 5, 1999.

19. The petitioners affirm that the Juzgado Corporativo Transitorio Especializado en Derecho Público [Transitory Corporate Court Specialized in Public Law], under which amparo proceedings were carried out in the first instance, found for the petition on January 27, 1998. They furthermore affirm that five months later, on June 22, 1998, the Sala Corporativa Transitoria [Transitory Superior Corporate Court] declared the petition inadmissible, and overturned the previous ruling. Finally, the petitioners state that, in a final and definitive ruling of June 21, 1999, notified on the same date, the Peruvian Constitutional Court declared their petition inadmissible on the grounds that it had been submitted in an untimely fashion.[FN10] The petitioners argue that the Constitutional Court engaged in a breach of legal duty, since its judgment was contrary to other of its own judgments handed down in other cases.[FN11]

[FN10] Ibid.

[FN11] Petitioners' April 14, 2000 communication.

20. Because of the foregoing, the petitioners argue that the State violated the right to a fair trial (Article 8), the principle of freedom from ex post facto laws (Article 9), the right to equal protection (Article 24), and the right to judicial protection (Article 25) of the American Convention, all in connection with the general obligation to respect and guarantee rights established by Article 1(1) of said international instrument.

21. The petitioners contend that, in the instant case, when Mr. Aguilar Angeletti was dismissed from his position in the judiciary as a tenured judge, he was fully entitled to the motion of appeal for reversal in order to exhaust administrative recourse and be able to access

the judicial venue to file an amparo petition, pursuant to the provisions of the 1979 Constitution, and the Organic Law of the Judiciary.[FN12]

[FN12] Ibid.

22. Finally, the petitioners state that the National Council of the Judiciary reinstated the alleged victim as Vocal Superior Titular [Superior Permanent (tenured) Judge] of the Judicial District of Amazonas on September 24, 2001, after ten years had transpired. In this respect, the petitioners allege that Law 27433 on the Reinstatement of Judges in the Judiciary, did not acknowledge the obligation of any payment owed to the reinstated judges. The petitioners argue that the State did not acknowledge the violations of the American Convention incurred in the instant case; that over these years Mr. Aguilar Angeletti had suffered a considerable diminishment of his pension and he had not received adequate reparation, especially concerning personal injury and pecuniary damage, since he has not yet received full reparations.[FN13]

[FN13] August 29, 2005 communication from the State.

B. The State

23. The State affirms that Mr. José Antonio Aguilar Angeletti was dismissed from his position as Superior Permanent Judge of the Judicial District of Amazonas by a June 13, 1992 decision of the Plenary Chamber Extraordinary of the Republic. The State also asserts that indeed, on July 23, 1992, the alleged victim filed a motion for reversal of said decision. It goes on to affirm that said appeal was declared inadmissible by a July 27, 1992 decision.

24. The State contends that the alleged victim, after nearly four years of having filed the appeal, on February 19, 1996, requested information on the decision regarding the appeal for reversal. In this respect, the State asserts that, on March 26, 1996, he received a transcription of the July 1992 decision denying his appeal.[FN14]

[FN14] March 14, 2000 communication from the State.

25. The State affirms that on April 22, 1996, the alleged victim lodged an amparo petition, and that the Constitutional Court, in January 21, 1999, as the final instance, confirmed the decision of the Transitory Corporate Court Specialized in Public Law, which had declared the amparo petition inadmissible. Once the case file was returned by the Constitutional Court, the Public Law Court closed the case on September 3, 1999, notifying the parties.[FN15] The State underscores that said amparo petition was denied by the Constitutional Court because the time period for filing had lapsed to claim lack of response on the part of the administration, and hence

denial, as had the time period to lodge an amparo petition: the plaintiff's time period for legal action had expired.[FN16]

[FN15] October 11, 2005 communication from the State

[FN16] March 14, 2000 communication from the State.

26. According to the State, the alleged victim, as a recourse, availed himself of an administrative proceeding against the decision that dismissed him from his position, filing an appeal for reversal governed by the Regulations on General Rules of Administrative Procedure approved by Supreme Decree No. 006-SC of November 11, 1967, which, according to the State, time periods considered, is applicable to this case. The State thus notes that since the appeal was filed within the deadline established by said legislation, administrative silence signifying denial became applicable, and for this reason the alleged victim had the right to a judicial appeal within a different time frame.[FN17]

[FN17] Ibid.

27. The State contends that consequently, since the plaintiff attempted to file an amparo petition almost four years after said facts, his action was inadmissible, pursuant to a strict application of Law 23506 in connection with the administrative norms applicable to the case.[FN18] The State also notes that to wait almost four years before filing a petition of this nature can be considered unreasonable, especially considering the presumed lack of action on the part of the alleged victim, who did not request anything from the Supreme Court until February and March of 1996.[FN19]

[FN18] Ibid.

[FN19] August 22, 2000 communication from the State.

28. The State further contends that an essential characteristic of petitions for constitutional guarantees is their immediacy in the face of a threat to a constitutional right; for this reason the time to file expires after sixty days, pursuant to article 37 of Law No. 23506. The State also argues that the alleged victim had the option of ordinary judicial recourse, since the facts are related to administrative litigation.

29. The State asserts that, consequently, these facts do not constitute a violation of the rights guaranteed by the American Convention. In the opinion of the State, the IACHR should declare the instant petition inadmissible in the light of article 47 b) and c) of the American Convention on Human Rights.[FN20]

[FN20] March 14, 2000 communication from the State.

IV. ANALYSIS OF ADMISSIBILITY

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

30. The petitioner is authorized by Article 44 of the American Convention to file petitions before the Commission. The petition identifies an individual as the alleged victim, with respect to whom the Peruvian State had undertaken the commitment to respect and guarantee the rights provided for by the American Convention. Peru is a State Party to the American Convention since July 28, 1978, the date it deposited its instrument of ratification. Therefore, the Commission has competence *ratione personae* to examine the petition.

31. The Commission also is competent *ratione loci* to hear the petition, given that it contains allegations regarding the violation of rights protected under the American Convention that presumably took place within the State's jurisdiction. The Commission is competent *ratione temporis* to examine the claim since the obligation to respect and guarantee rights protected under the American Convention was already in force for the State at the time in which the facts alleged in the petition occurred. Finally, the Commission is competent *ratione materiae*, because the petition reports possible violations of human rights protected by the American Convention.

B. Other requirements for the admissibility of the petition

1. Exhaustion of domestic remedies

32. Article 46(1)(a) of the American Convention provides that, for a complaint lodged before the Inter-American Commission in accordance with Article 44 of the Convention to be admissible, it is necessary that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to allow domestic authorities to hear about the alleged violation of a protected right and, if appropriate, to provide a solution before it is heard in an international venue.

33. The requirement of prior exhaustion of domestic remedies is applicable when within the domestic system there is effectively available recourse, adequate and effective, to remedy the alleged violation. In this respect, Article 46(2) establishes that said requirement is not applicable when the domestic legislation of the State concerned does not afford due process of law for the protection of the right that has allegedly been violated; or when the remedies under domestic law were inaccessible to the alleged victim; or when there has been unwarranted delay in rendering a final judgment under the aforementioned remedies. As provided for by Article 31 of the Rules of Procedure of the Commission, when the petitioner claims one of these exceptions, it is up to the State to prove that domestic remedies have not been previously exhausted, unless that is clearly evident from the record.

34. It is the opinion of the Commission that, in the instant case, it is appropriate to engage in a number of considerations. First, it should be noted that an analysis of the State's arguments shows that they refer to a lack of exhaustion of domestic remedies on the part of Mr. José Antonio Aguilar Angeletti, based on the alleged untimely filing of an amparo petition and on the argument that he could have turned to ordinary jurisdiction by filing a suit in a court of public administrative law.

35. Second, the Commission notes that the purpose of the claim lodged before the IACHR refers to an alleged violation of the American Convention that could touch upon the interpretation of domestic legislation, made by the Constitutional Court, with respect to the time period to file an amparo petition in the case of Mr. Aguilar Angeletti. Consequently, should the Commission continue to hear and decide on the arguments given by the State regarding the lack of exhaustion of domestic remedies, based on an untimely filing of an amparo petition, this would entail an opinion on the merits of the case, which would then mean a prior judgment of the case at the admissibility stage. Indeed, the claims made by the Peruvian state regarding the admissibility of the petition require a decision on the interpretation chosen by the Constitutional Court regarding the time period to file an amparo petition.

36. In the light of the foregoing considerations, and for the purpose of examining the admissibility of the instant petition regarding the requirement of prior exhaustion of domestic remedies, the Commission shall analyze whether judicial recourse was available to the petitioner within the domestic jurisdiction that would have allowed him to challenge the interpretation made by the Constitutional Court regarding the time period to file an amparo petition. In this respect, the Commission notes that Article 45 of Law 26.435, in force at the time of the reported facts, provided that "the Constitutional Court hears in the final and definitive instance any petitions regarding the protection of fundamental rights provided for by paragraphs 1, 2, 3, and 6 of Article 200 of the Constitution," including the amparo petition. This rule makes clear that the decision of the Constitutional Court, considered by the petitioner as violating the Convention, is not subject to appeal within the domestic jurisdiction, it provides a final decision. Consequently it is the opinion of the Commission that the requirement of prior exhaustion of domestic remedies has been met.

2. Time period to submit the petition

37. Article 46(1)(b) of the Convention provides that for a petition to be admissible, it must be lodged within a period of six months from the date on which the interested party was notified of the final judgment in the domestic jurisdiction.

38. Bearing in mind the foregoing, it is the understanding of the Commission that the decision exhausting domestic jurisdiction is the January 21, 1999 judgment of the Constitutional Court. The petitioner alleges that he was notified of this decision on June 21, 1999. Consequently, the Commission concludes that the requirement concerning the six-month time period has been met in the instant case.

3. Duplication of proceedings and international res judicata

39. It is not evident from the record that the subject of the petition is pending in another international proceeding for settlement, nor that it is substantially the same as one previously studied by the Commission or by another international organization. Therefore, the requirements established by Articles 46(1)(c) and 47(d) of the Convention are considered to have been met.

4. Characterization of the alleged facts

40. Article 47(b) of the Convention provides that the Commission shall consider inadmissible a petition or communication that does not state facts that tend to establish a violation of the rights guaranteed by this Convention. In this respect, the Commission shall now analyze whether the facts reported herein characterize a violation of the articles of the Convention invoked by the petitioner.

41. In the instant case, the petitioner has presented a series of arguments related to an alleged violation of his following rights: the right to a fair trial, freedom from ex post facto laws, the right to equal protection, and the right to judicial protection, provided for by Articles 8, 9, 24, and 25 of the American Convention. The petitioner specifically refers to the interpretation of domestic legislation made by the Constitutional Court, which he asserts violates his right to judicial recourse and effective judicial protection, because it entails the arbitrary denial to hear the merits of the amparo petition he filed. The State, for its part, alleges that the decision of said court was taken in accordance with domestic norms and the guarantees of due process.

42. According to the jurisprudence of the inter-American system, the Commission is not authorized to review “decisions handed down by national courts acting within their authority and applying the appropriate legal guarantees, unless it is found that there has been a violation of some right protected by the Convention.”[FN21] In this respect, the Commission has reiterated on numerous occasions that:

“Under the preamble of the American Convention on Human Rights, the protection that the organs of the inter-American system for the protection of human rights offers is intended to complement the protection afforded by the local courts. The Commission cannot take upon itself the functions of an appeals court in order to examine alleged errors of fact or law that local courts may have committed while acting within the scope of their jurisdiction, unless there is unequivocal evidence that the guarantees of due process recognized in the American Convention have been violated.”[FN22]

[FN21] IACHR, Report No. 8/98, Case 11.671, Carlos García Saccone (Argentina), March 2, 1998, para. 53.

[FN22] IACHR, Report No. 122-01, Petition 0015/00, Wilma Rosa Posadas (Argentina), October 10, 2001, para. 10.

43. In the light of the foregoing considerations, it is the opinion of the Commission that it is not appropriate to examine the alleged international responsibility of the Peruvian state on the basis of the interpretation that the Constitutional Court made of the domestic legislation

applicable to determine the legitimacy of the amparo petition. Indeed, the Commission notes that the matters submitted by the petitioner would require that the IACHR review the interpretation of the procedural legislation applicable to the case in order to determine the appropriateness of the venues chosen by the petitioner to satisfy his claims.

44. Consequently, “the petitioners’ mere disagreement with the interpretation by the Peruvian judicial organs of the relevant legal provisions and with the weighing of the facts proven in the case does not suffice to show violations of the Convention. The interpretation of the law, the relevant procedure, and the weighing of the evidence is, among others, a function to be exercised by the domestic jurisdiction, which cannot be replaced by the IACHR.”[FN23]

[FN23] IACHR, Report No. 39/05 (Peru), Petition 792/01, Carlos Iparraguirre and Luz Amada Vásquez de Iparraguirre.

45. In sum, it cannot be inferred from the documentation provided that any arbitrary judicial action has taken place, or that the alleged victim has been prevented from using domestic remedies under the guarantees of due process, or that there has been an application of ex post facto laws. Furthermore, with respect to Article 24 of the Convention, the facts alleged do not allow the consideration of a possible unequal treatment in the sense used in this provision.

V. CONCLUSIONS

46. The IACHR has established in this report that the facts described by the petitioner do not constitute a violation of the American Convention and hence declares the petition inadmissible for not having met one of the requirements established by the Convention, and that hence it is unnecessary to continue with the examination of the merits of the case. Based on the foregoing arguments in fact and in law,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant case inadmissible.
2. To notify the parties of this decision.
3. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

Done and signed by the Inter-American Commission on Human Rights in Washington, D.C., on the 9th day of the month of March 2007. (Signed) Florentín Meléndez, President; Paolo Carozza, First Vice-President; Clare K. Roberts, Freddy Gutiérrez, and Evelio Fernández Arévalos, members of the Commission.