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Institution: Inter-American Commission on Human Rights
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Session: Hundred Twenty-Seventh Session (26 February – 9 March 2007)
Title/Style of Cause: Eulogio Miguel Paz Melgarejo, Julio Enrique Agreda Villavicencio, Nancy Lilia Alvis Mestanza, Diomedes Oswaldo Anchante Andrade, Elsa Maritza Aragon Hermoza, Eliana Elder Araujo Sanchez, Aldo Nervo Atarama Lonzo, Victoria Ruth del Socorro Bedoya de Chocano, Oscar Enrique Bejar Pereyra, Jorge Aurelio Buendia Gutierrez, Berly Gustavo Francisco Cano Suarez, Julio Cesar Casma Angulo, Maria del Pilar Castillo Soltero, Daniel Antonio Cerna Bazan, Jose Ignacio Alfonso Baltazar Chacon Alvarez, Carlos Hernan Flores Vega, Justino Jesus Gallegos Sanabria, Claudio Luis Pedro Gazzolo Villata, Medardo Gomez Baca, Juan Emilio Gonzales Chavez, Jose Rogelio Gonzales Lopez, Zosimo Javier Gonzalez Torres, Isabel Brigida Heredia Vilchez, Jose Alberto Hidalgo Esquivel, Berna Julia Morante Soria, Tomas Padilla Martos, Nilo Raul Palacios Garcia, Moises Meliton Pantoja Rodulfo, Eulogio Miguel Paz Melgarejo, Fabiola Janet Pena Tavera de Agurto, Juan Peralta Cueva, Walter Humberto Pineda Julia, Victor Manuel Ernesto Polick Dominguez, Maria Ysabel Rabines Briceno, Nolberto Felipe Ramirez Maguina, Ada Reydelinda Reategui Morales, Carlos Simon Rodriguez Ramirez, Rosa Mercedes Rolando Ramirez, Luis Julio Saez Palomino, Jorge Alfredo Sifuentes Stratti, Carlos Hermogenes Sotelo Donayre, Gerardo Adan Soto Quiroz, Cesar Perci Tambini Vasquez, Mario Antonio Urrello Alvarez, Rosa Victoria Valdivia Yaranga, Gino Marcio Valdivia Sorrentino, Cesar Augusto Vasquez Arana, Gladys Nancy Fernandez Sedano, Florencio Rivera Cervantes, Victor Manuel Cubas Villanueva, Alfredo Ferreyros Paredes, Jorge Carlos Castaneda Espinoza, Octavio Concha Mora, Felix Diodoro Herrera Calderon, Victor Ricardo Mayorga Miranda, Carlos Quispe Alvarez, Senen Lazaro Ramos Giles, Raul Sebastian Rosales Mora, Eliana Salinas Ordonez, Oscar Gilberto Vasquez Arana, Lizardo Emiliano Suarez Franco and Lorena Teresa Alessi Janssen de Bedoya v. Peru

Doc. Type: Decision
Decided by: President: Florentin Melendez;
First Vice-President: Paolo Carozza;
Second Vice-President: Victor Abramovich;
Commissioners: Evelio Fernandez Arevalos, Clare K. Roberts, Paulo Sergio Pinheiro, Freddy Gutierrez.

Dated: 9 March 2007
Citation: Paz Melgarejo v. Peru, Petition 732-01, Inter-Am. C.H.R., Report No. 20/07, OEA/Ser.L/V/II.130, doc. 22 rev. 1 (2007)

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I. SUMMARY

1. The Inter-American Commission on Human Rights (hereinafter “IACHR” or “the Commission”), pursuant to article 49 of the American Convention on Human Rights (hereinafter the “Convention” or the “American Convention”) and to article 41.5 of its Rules of Procedure, hereby identifies the alleged victims and their petitions related to the process of confirmation of judges and prosecutors made by the Consejo Nacional de la Magistratura [National Judicial Council] (CNM), over which friendly settlement agreements have been reached with the Peruvian state. The Commission also provides a general summary of the facts alleged by the petitioners, and transcribes the Friendly Settlement Agreement RS N°. 261-2005-JUS, signed on October 13, 2006 by the Minister of Justice and a group of fifty judges and prosecutors who were not confirmed by the CNM, and on November 23, 2006 with an additional group of eleven alleged victims, in total 61 alleged victims. In addition, the Commission hereby approves the terms of the Agreement, and orders this report be published.

II. HAVING CONSIDERED THE FOLLOWING FACTS:

2. That the alleged victims listed below, on October 13, 2006, signed a Friendly Settlement Agreement with the Peruvian state:

1. Julio Enrique Agreda Villavicencio, P 764-01
2. Nancy Lilia Alvis Mestanza, P 571-04
3. Diomedes Oswaldo Anchante Andrade,
(or Diomedes de María Oswaldo Anchante Andrade) P 494-04
4. Elsa Maritza Aragón Hermoza, P 4394-02
5. Eliana Elder Araujo Sánchez, P 4394-02
6. Aldo Nervo Atarama Lonzoy, P 33-03
7. Victoria Ruth del Socorro Bedoya de Chocano, P 4404-02
8. Oscar Enrique Bejar Pereyra, P 9-04
9. Jorge Aurelio Buendía Gutiérrez, P 152-04
10. Berly Gustavo Francisco Cano Suárez, P 33-03
11. Julio César Casma Angulo, P 119-03
12. María del Pilar Castillo Soltero, P 119-03
13. Daniel Antonio Cerna Bazán, P137-04
14. José Ignacio Alfonso Baltazar Chacón Alvarez, P 326-06
15. Carlos Hernán Flores Vega, P 4394-02
16. Justino Jesús Gallegos Zanabria, P33-03
17. Claudio Luís Pedro Gazzolo Villata, P 4679-02
18. Medardo Gómez Baca, P 33-03
19. Juan Emilio González Chávez, P 4394-02
20. José Rogelio González López, P 507-06
21. Zósimo Javier González Torres, (or Zozísimo Javier González Torres) P 958-04
22. Isabel Brígida Heredia Vélchez, P 33-03
23. José Alberto Hidalgo Esquivel, P 958-04

24. Berna Julia Morante Soria, P 33-03
25. Tomás Padilla Martos, P 106-06
26. Nilo Raúl Palacios García, P 571-04
27. Moisés Melitón Pantoja Rodulfo, P 427-03
28. Eulogio Miguel Paz Melgarejo, P 732-01
29. Fabiola Janet Peña Tavera de Agurto, P 33-03
30. Juan Peralta Cueva, P 571-04
31. Walter Humberto Pineda Julia, P 433-06
32. Víctor Manuel Ernesto Polick Domínguez,
(or Víctor Manuel Ernesto Polik Domínguez) P 33-03
33. María Ysabel Rabines Briceño, P 33-03
34. Nolberto Felipe Ramírez Maguiña, P 198-06
35. Ada Reydelinda Reátegui Morales, P 4394-02
36. Carlos Simón Rodríguez Ramírez, P 958-04
37. Rosa Mercedes Rolando Ramírez, P 1159-03
38. Luis Julio Sáez Palomino, P 4394-02
39. Jorge Alfredo Sifuentes Stratti, P 571-04
40. Carlos Hermógenes Sotelo Donayre, P 137-04
41. Gerardo Adán Soto Quiroz, P 137-04
42. César Perci Tambini Vásquez, P 119-03
43. Mario Antonio Urrello Álvarez, 909-03
44. Rosa Victoria Valdivia Yaranga, P 958-04
45. Gino Marcio Valdivia Sorrentino, P 40-06
46. César Augusto Vásquez Arana, P 33-03
47. Gladys Nancy Fernández Sedano, P 4394-02
48. Florencio Rivera Cervantes, P 135-04
49. Víctor Manuel Cubas Villanueva, P 33-03
50. Alfredo Ferreyros Paredes, P 4394-02

That the following alleged victims, on November 23, 2006, signed a Friendly Settlement Agreement with the Peruvian state:

51. Jorge Carlos Castañeda Espinoza, P 196-06
52. Octavio Concha Mora, P 118-06
53. Félix Diodoro Herrera Calderón, P 764-01
54. Víctor Ricardo Mayorga Miranda, P 146-06
55. Carlos Quispe Álvarez, P 498-06
56. Senen Lázaro Ramos Giles, P 764-01
57. Raúl Sebastián Rosales Mora, P 4394-02
58. Eliana Salinas Ordoñez, P 764-01
59. Oscar Gilberto Vásquez Arana, P 764-01
60. Lizardo Emiliano Suárez Franco, P 33-03
61. Lorena Teresa Alessi Janssen de Bedoya, P 764-01

3. That, from the year 2001, the Commission has received petitions lodged by judges and prosecutors dismissed from their positions because they were not confirmed by the National Judicial Council (hereinafter, according to the Spanish acronym, “the CNM”).

4. That the petitions generally report that the Republic of Peru (hereinafter “Peru,” “the State,” or “the Peruvian state”) violated, with prejudice to the petitioners, the right to a fair trial, the right to privacy, the right to participate in government, the right to equal protection, and the right to judicial protection, all provided for, respectively, by articles 8, 11, 23, 24, and 25 of the American Convention on Human Rights (hereinafter the “Convention” or the “American Convention”), in concordance with article 1.1 of same.

5. That the violations reported are related to alleged irregularities committed by the CNM in proceeding with the non-confirmation of the complainants’ tenure. In their respective petitions, the alleged victims generally tend to argue that the decision or action deciding their non-confirmation does not include reasoned grounds in fact and in law, as required by the Constitution, and that their right to a proper defense and the principle of judicial tenure have been violated.

6. That the alleged victims request, in general, that they be reinstated in their positions, that a new process of evaluation and confirmation be undertaken, and that they receive pecuniary damages as well as damages for pain and suffering.

7. That the alleged victims contend that there is no domestic recourse to control or review the decisions made by the National Judicial Council,[FN3] and that therefore, they generally argue, the exception provided for by sub-paragraph a) of paragraph 2 of article 46 is applicable to their cases.

[FN3] Pursuant to article 142 of the 1993 Constitution, in concordance with article 1 of the Organic Law of the National Judicial Council, Law No. 26397, the decisions of the Consejo Nacional de la Magistratura [National Judicial Council] are not subject to judicial review.

8. That notwithstanding that the Constitution, the Organic Law of the National Judicial Council, and the Rules of Procedure for the Evaluation and Confirmation of Judges and Prosecutors (Res. N° 043-2000-CNM and 241-2002-CNM) deny the possibility of administrative or judicial appeals against decisions of the National Judicial Council, several alleged victims had lodged amparo petitions [for the protection of constitutional rights] within their domestic jurisdiction.

9. That although some of the alleged victims lodged their complaints with the IACHR before its final judgment was handed down on the petition presented within the friendly settlement procedure, said amparo petitions were decided by the Constitutional Court.

10. That the petitioners that have applied for amparo proceedings can be classified into two groups: on the one hand, those judges and prosecutors who were handed down a judgment by the

Constitutional Court declaring their claim groundless or inadmissible, but which reserves their right to apply once again for a judge or prosecutor's position; and, on the other hand, those judges and prosecutors who were handed down a judgment of the Constitutional Court declaring, for each of their cases, that the CNM's decision was inapplicable, and ordering a personal interview.

III. BEARING IN MIND:

11. Reports No. 50/06[FN4] and No. 109.06,[FN5] respectively approved during the 124th and 126th Regular Sessions of the Commission, in which friendly settlement agreements, identical to those arrived at in the above-mentioned petitions, were considered and approved.

[FN4] Report No. 50/06, Petition 711-01 and Others, Friendly Settlement, Miguel Grimaldo Castañeda Sánchez et al., March 15, 2006.

[FN5] Report No. 109/06, Petition 33-03 and Others, Friendly Settlement, Alejandro Espino et al., October 21, 2006.

IV. WHEREAS:

12. By Supreme Decisions N° 261/2005/JUS signed on October 13, 2006 and November 23, 2006, the State of Peru and some of the alleged victims in the aforementioned petitions arrived at the following Friendly Settlement Agreement:

FRIENDLY SETTLEMENT AGREEMENT: No. 261/2005/JUS (13.10.06 y 23.11.06)

FRIENDLY SETTLEMENT AGREEMENT

CLAUSE 1:

ACKNOWLEDGEMENT OF RESPONSIBILITY BY THE PERUVIAN STATE

The State acknowledges that the process of confirmation of judges and prosecutors carried out before the entry into force, on December 1, 2005, of the Code of Constitutional Procedure (Law No. 28237), although in accordance with the interpretation of the applicable rules made by the appropriate courts, did not include certain guarantees for effective procedural protection, particularly, the requirement, which should be complied with in any proceeding, of a decision reasoned in fact and in law. This is clear in light of provisions of the Constitution of Peru, human rights treaties binding the Peruvian state, binding jurisprudence of the Inter-American Court of Human rights, as well as of the Constitutional Court (Decision of August 12, 2005, handed down in the extraordinary appeal related to amparo proceedings, lodged by Mr. Jaime Amado Álvarez Guillén), and the Code of Constitutional Procedure, cited above.

CLAUSE 2:

EFFECTS OF THE ACKNOWLEDGEMENT OF RESPONSIBILITY

It is the opinion of both parties, in accordance with Clause 1 of this Friendly Settlement Agreement, that, pursuant to international human rights norms binding the Peruvian state, and to provisions of the Constitution of Peru, the reversal by the National Judicial Council of its rulings for non-confirmation of the judges and prosecutors included in the instant friendly settlement, is legal. Consequently, the judges and prosecutors hereby are reinstated with the following effects:

Reinstatement in the Judiciary or the Office of the Attorney General, respectively.

The National Judicial Council will restore their corresponding titles within fifteen days following the approval of the instant Friendly Settlement Agreement by the Inter-American Commission of Human Rights.

The Judiciary or the Office of the Attorney General, in the cases, respectively, of judges or prosecutors, will order the reinstatement of the judge or prosecutor to his or her original position within the following fifteen days after their title is restored. Should his or her original position not be available, at the judge's or prosecutor's request, he or she shall be reinstated in a vacant position of the same level in the same Judicial District, or in another one. In this case, said judge or prosecutor will have the first option to return to his or her original position at the time a vacancy appears.

Other rights of the judges and prosecutors reinstated in the Judiciary or the Office of the Attorney General.

Recognition of time in service

The Peruvian state undertakes the commitment to recognize the days counted from the date of the decision on non-confirmation, for purposes of estimating time served, retirement and other work benefits granted by Peruvian law. Should it be necessary, in order to comply with this Friendly Settlement agreement, to relocate judges and prosecutors to another Judicial District, their years of work shall be recognized for all legal effects in their new seat.

Recognition of the right to domestic recourse

The Peruvian state will delay payment of any other sum owed in compensation that should be appropriate, pursuant to domestic and supranational law and jurisprudence, until such time that the petitioners take steps or action to this effect.

Expenses and costs of the proceedings.

The Peruvian state agrees to pay a petitioner who abides by this Friendly Settlement a total indemnity of US\$5,000.00 (five thousand United States dollars), which includes expenses and costs related to national and international proceedings of his or her petition.

New process of evaluation and confirmation.

The Peruvian state will carry out, through the National Judicial Council, a new procedure of evaluation and confirmation for the judges and prosecutors included in this agreement. This new procedure shall be carried out in accordance with constitutional norms and principles (articles 139 and 154 of the Constitution of Peru), the American Convention on Human Rights, and binding jurisprudence guaranteeing due process handed down by the Inter-American Court of Human Rights and the Constitutional Court. As needed, the corresponding provisions shall be adapted for this purpose.

**CLAUSE 3:
CEREMONY OF PUBLIC APOLOGY**

The representative of the Peruvian state undertakes the commitment to have a ceremony of public apology in favor of the reinstated judges and prosecutors.

**CLAUSE 4:
LEGAL BASIS**

This agreement is hereby signed in accordance with the provisions of articles 2 (fundamental rights of the person), 44 (primary duties of the state), 55 (validity of treaties), 205 (supranational jurisdiction), and the Fourth Final and Provisional Provision (interpretation of fundamental rights) of the Constitution of Peru; articles 1 (obligation to respect rights), 2 (domestic legal effects), 8 (right to a fair trial), and 48(1)(f) (friendly settlement) of the American Convention on Human Rights, and article 41 of the Rules of Procedure of the Inter-American Commission on Human Rights.

**CLAUSE 5:
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 appropriate, and with the principle of good faith. Should a question or disagreement arise among the parties regarding the meaning of this agreement, the Inter-American Commission on Human Rights shall decide on its interpretation.

**CLAUSE 6:
APPROVAL BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (IACHR)**

This Friendly Settlement Agreement is subject to approval by the Inter-American Commission on Human Rights. The Peruvian state undertakes the commitment to request said approval as soon as possible, and, once obtained, to inform the National Judicial Council (CNM), so that it may proceed according to Clause 2 and reserve the positions of the judges and prosecutors who participate in the new evaluation and confirmation process.

**CLAUSE 7:
ACCEPTANCE**

The parties signing this Friendly Settlement Agreement express their free and voluntary agreement with and acceptance of each and every one of its clauses, expressly declaring that the agreement ends any controversy over its points, as well as any complaint regarding the liability of the Peruvian state for the human rights violations that affected the petitioners.

CLAUSE 8:

APPLICATION OF THE MOST FAVORABLE TERMS OF SETTLEMENT

The parties expressly declare that if the State should subsequently accept more favorable conditions for other petitioners with the same legal status, these new conditions shall also be applied to those who signed this Friendly Settlement Agreement.

13. The Commission understands that, in accordance with the purpose of the American Convention and, particularly, because of the consensual nature of the friendly settlement procedure, in a petition with multiple victims, it can be allowed that an agreement be reached with some of them and not with others.

14. That for petitions numbers 732-01, 4404-02, 4679-02, 427-03, 909-03, 1159-03, 9-04, 135-04, 152-04, 40-06, 106-06, 118-06, 146-06, 196-06, 198-06, 326-06, 433-06, 498-06 and 507-06, the totality of the alleged victims are included in the Friendly Settlement Agreement. Consequently, their processing shall be ended.

15. That for petitions 764-2001, 4394-02, 33-03, 119-03, 137-04, 494-04, 571-04 and 958-04, in which only some of the alleged victims are included in the Friendly Settlement Agreement, the Commission hereby ends processing related to those victims that signed the agreement, and orders that proceedings continue, at the stage in which they are found, in the cases of the alleged victims not included in the agreement.

16. That the agreement transcribed is fully compatible with obligations pursuant to the American Convention and that, therefore, it is appropriate to grant it approval.

17. That the Commission at this time cannot fail to note that the State has reached agreements with some individual victims, although several dozen more are substantially in the same conditions and have presented identical complaints to the IACHR. In this respect, the IACHR notes that the State has acknowledged its international responsibility for the violation of human rights of individuals subject to the process of confirmation carried out by the National Judicial Council. Therefore, the Commission calls upon the State to reach a global solution or find other appropriate alternatives.

V. DECIDES:

1. To approve the Friendly Settlement Agreement signed by the parties on October 13, 2006 and November 23, 2006.

2. To continue with the follow up and supervision of each and every one of the points of the friendly agreement and, in this context, remind the parties of their commitment to inform the IACHR, every three months, regarding compliance with this friendly settlement.

3. To close the processing of petitions 732-01, 4404-02, 4679-02, 427-03, 909-03, 1159-03, 9-04, 135-04, 152-04, 40-06, 106-06, 118-06, 146-06, 196-06, 198-06, 326-06, 433-06, 498-06 and 507-06.
4. To continue with the processing of petitions 764-2001, 4394-02, 33-03, 119-03, 137-04, 494-04, 571-04 and 958-04, at their respective procedural stages, regarding the alleged victims who have not been included in the Friendly Settlement Agreement.
5. To remain at the disposal of the parties in order to reach a friendly solution of the aforementioned matters (number 4 of this decision).
6. To call upon the State to achieve an integral solution to the problem of non-confirmation by the National Judicial Council.
7. To publish this report and 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 9th day of the month of March, 2007.
(Signed): Florentín Meléndez, President; Paolo G. Carozza, First Vice-President; Víctor E. Abramovich, Second Vice-President; Evelio Fernández Arévalos, Clare K. Roberts, Paulo Sérgio Pinheiro and Freddy Gutiérrez, Commissioners.