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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 71/07; Petitions 758-01, 764-01, 4394-02, 33-03, 119-03, 965-03, 1-04, 137-04, 156-04, 571-04, 395-06
Session: Hundred Twenty-Eighth Session (16 – 27 July 2007)
Title/Style of Cause: Hernan Atilio Aguirre Moreno, Carlos Alberto Alarcon del Portal, Luis Felipe Almenara Bryson, Roger Alberto Cabrera Paredes, Washington Hurtado Hermoza, Marcos Ibazeta Marino, Pedro Iberico Mas, Dante Augusto Ore Blas, Nelson Reyes Rios, Alvaro Rafael Rodas Diaz, Mirtha Crisalida Trabucco Cerna, Nimer Roberto Marroquin Mogrovejo, Wilbert Genaro Villafuerte Mogollon and Juan Miguel Ramos Lorenzo 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, Freddy Gutierrez.
Dated: 27 July 2007
Citation: Aguirre Moreno v. Peru, Petition 758-01, Inter-Am. C.H.R., Report No. 71/07, OEA/Ser.L/V/II.130, doc. 22 rev. 1 (2007)
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I. SUMMARY

1. In the present friendly settlement report, issued pursuant to Article 49 of the American Convention on Human Rights (hereinafter the “Convention” or the “American Convention”) and Article 41.5 of the Rules of the Procedure of the Inter-American Commission on Human Rights (hereinafter “the IACHR” or “the Commission”), the Commission identifies the alleged victims, and their respective petitions, who have arrived at friendly settlement agreements with the Peruvian State regarding their claims concerning the process of confirmation of magistrates and prosecutors carried out by the National Council of the Magistracy [Consejo Nacional de la Magistratura] (hereinafter the “CNM”); presents a general overview of the facts alleged by the petitioners; and transcribes Friendly Settlement Agreement RS. 261-2005-JUS, signed by the Minister of Justice on January 15, 2007, with a group of 14 magistrates and prosecutors who were not reconfirmed by the CNM. This report also approves the terms of the Agreement and orders the publication of the instant report.

II. BACKGROUND

2. The following alleged victims signed a Friendly Settlement Agreement with the Peruvian State on January 15, 2007:

1. Carlos Alberto Alarcón del Portal, P. 4394-02
2. Luís Felipe Almenara Bryson, P. 119/03
3. Roger Alberto Cabrera Paredes, P. 965-03
4. Washington Hurtado Hermoza, P. 119-03
5. Marcos Ibazeta Marino, P. 33-03
6. Pedro Ibérico Mas, P. 1-04
7. Dante Augusto Oré Blas, P. 137-04
8. Nelson Reyes Ríos, P. 156-04
9. Álvaro Rafael Rodas Díaz, P. 137-04
10. Mirtha Crisálida Trabucco Cerna, P. 571-04
11. Nimer Roberto Marroquin Mogrovejo, P. 395-06
12. Wilbert Genaro Villafuerte Mogollón, P. 764-01
13. Juan Miguel Ramos Lorenzo, P. 4394-02
14. Hernán Atilio Aguirre Moreno, P. 758-01

3. Since 2001, the Commission has been receiving petitions lodged by magistrates and prosecutors who were dismissed from office after the CNM chose not to reconfirm them.

4. In general, the petitions complain that the Republic of Peru (hereinafter “Peru,” “the State,” or “the Peruvian State”) violated their right to a fair trial, to protection of their honor, their political rights, their right to equal protection before the law, and their right to judicial protection, all recognized in Articles 8, 11, 23, 24, and 25, respectively, of the American Convention in conjunction with Article 1.1 of that international instrument.

5. The violations complained of have to do with alleged irregularities committed by the CNM in its decision not to reconfirm the petitioners in their offices. In general terms, the alleged victims argue in their respective petitions that the resolution or act through which they were not reconfirmed did not state a reasoned basis for the decision in accordance with the provisions of the Constitution. They claim that this violated their right to a defense and the principle that judges cannot be removed.

6. In general, the alleged victims request their reinstatement, a new evaluation and reconfirmation process, and reparations for moral and material injuries.

7. The alleged victims argue that there is no remedy available in the domestic jurisdiction by which to review the decisions of the CNM.[FN3] Based on the foregoing, they assert, in general, that the exception provided in Article 46.2.a applies.

[FN3] Under Article 142 of the Constitution of 1993 in keeping with Article 1 of the Organic Law of the National Council of the Magistracy (Law 26397), the decisions of the CNM are not subject to judicial review.

8. In spite of the fact that the Constitution, the Organic Law of the National Council of the Magistracy, and the Rules of Procedure for Evaluation and Ratification of Judges and Prosecutors (Res. 043-2000-CNM and 241-2002-CNM) do not allow the possibility of administrative or judicial appeals against decisions adopted by the CNM, several alleged victims brought actions for relief (amparo) in the domestic jurisdiction.

9. Some of these alleged victims lodged their respective complaints with the IACHR before a final decision was rendered on the suit filed.

10. The petitioners who have pursued actions for amparo can in general be divided into two categories: magistrates and prosecutors who have received a judgment from the Constitutional Court declaring the suit unfounded, while upholding their right to stand for a judicial posting in the future; and those magistrates and prosecutors who have received a Constitutional Court judgment declaring the respective CNM ruling without relevance and ordering that a personal interview be conducted.

III. BEARING IN MIND:

11. Reports 50/06[FN4], 109/06[FN5] and 20/07[FN6], adopted during the Commission's 124th, 126th and 127th regular sessions, respectively, which examined and approved friendly settlement agreements identical to those arrived at in the petitions mentioned above.

[FN4] Report 50/06, Petition 711-01 et al., Friendly Settlement, Miguel Grimaldo Castañeda Sánchez et al., March 15, 2006.

[FN5] Report 109/06, Petition 33-03 et al., Friendly Settlement, Alejandro Espino et al., October 21, 2006.

[FN6] Report 20/06, Petition 732-01 et al., Friendly Settlement, Eulogio Paz Melgarejo et al., March 9, 2007.

IV. WHEREAS:

12. By means of Supreme Resolution No. 261/2005/JUS, of January 15, 2007, the State of Peru and some of the alleged victims in the petitions mentioned arrived at the following Friendly Settlement Agreement:

FRIENDLY SETTLEMENT AGREEMENT: R.S. 261/2005/JUS (15.01.07)

FRIENDLY SETTLEMENT AGREEMENT

FIRST CLAUSE

ACKNOWLEDGMENT OF RESPONSIBILITY BY THE PERUVIAN STATE

The State acknowledges that the process of reconfirmation of judges and prosecutors, as it was carried out prior to the promulgation, on December 1, 2005, of the Constitutional Procedures

Code (Law 28237), while it conformed to the interpretation of the applicable norms by the relevant institutions, did not include certain guarantees of Effective Procedural Safeguards, particularly the requirement that a resolution should state the grounds, which should be observed in any type of proceedings. This, in keeping with the provisions of the Political Constitution of Peru, human rights treaties that are binding on the Peruvian State, the binding jurisprudence on this matter from the Inter-American Court of Human Rights, and from the Constitutional Court (Judgment of August 12, 2005, handed down in the extraordinary remedy on the Amparo Process brought by Mr. Jaime Amado Álvarez Guillén), and the aforementioned Constitutional Procedures Code.

SECOND CLAUSE EFFECTS OF THE ACKNOWLEDGMENT OF RESPONSIBILITY

In accordance with the contents of the First Clause of this Friendly Settlement Agreement, both parties agree that, according to law, pursuant to international human rights norms that are binding on the Peruvian State and to the provisions of the Political Constitution of Peru, the National Council of the Magistracy should rescind the resolutions declaring the nonreconfirmation of the judicial officials included in the instant friendly settlement. The judicial officials are thereby reinstated to their status as such for the following effects and purposes:

2.1 Reinstatement in the Judiciary or in the Office of the Attorney General [Ministerio Público], respectively.

The National Council of the Magistracy will restore the corresponding title within 15 (fifteen) days following the approval, by the Inter-American Commission on Human Rights, of this Friendly Settlement Agreement.

The Judiciary or the Office of the Attorney General, in the cases of judges or prosecutors respectively, will order the reinstatement of the judicial official to his or her original post within 15 (fifteen) days of the restoration of the title. If the original posting is not available, at the request of the judicial official, he or she will be reinstated to a vacancy of the same level in that or in another Judicial District. In such a case, the judicial official will have first refusal for returning to his or her original posting once the respective vacancy occurs.

2.2 Other rights of the judicial officials reinstated to the Judiciary or to the Office of the Attorney General.

2.2.1 Recognition of length of service.

The Peruvian State pledges to recognize the period of service not worked, counted from the date of the Resolution of nonreconfirmation, in calculating length of service, retirement, and other applicable employment benefits under Peruvian law. The seniority of the services provided by the judicial officials included in this Friendly Settlement Agreement, should it become necessary in compliance with its provisions to transfer them to another Judicial District, shall be recognized for all effects and purposes in the new location.

2.2.2 Acknowledgment of their right to recourse in the domestic venue.

The Peruvian State defers the payment of any other amount of compensation that may be in order, in accordance with national and supranational jurisprudence, to the outcomes of the measures or actions undertaken for that purpose by the petitioner(s).

2.3 Expenses and costs of the process.

The Peruvian State grants to any petitioner who accepts this Friendly Settlement, a total compensation in the amount of US\$ 5,000.00 (Five thousand U.S. dollars and 00/100), which includes the outlays and costs derived from domestic and international proceedings related to their petition.

2.4 New evaluation and reconfirmation process.

The Peruvian State will conduct a new evaluation and reconfirmation process under the purview of the National Council of the Magistracy for the judicial officials included in the instant agreement. This new procedure will 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 the binding jurisprudence to ensure due process guarantees as pronounced by the Inter-American Court of Human Rights and by the Constitutional Court. The relevant legal provisions shall be adapted as necessary for this purpose.

THIRD CLAUSE

PUBLIC REPARATIONS CEREMONY

The representative of the Peruvian State pledges to hold a Public Reparations Ceremony for the reinstated judicial officials.

FOURTH CLAUSE

LEGAL BASIS

This Agreement is signed in accordance with the provisions of Articles 2 (Fundamental Rights of the Individual), 44 (Fundamental obligations of the State), 55 (Treaties in Force), 205 (Supranational Jurisdiction), and the Fourth Final and Transitory Provision (Interpretation of Fundamental Rights) of the Constitution of Peru; Articles 1 (Obligation to respect rights), 2 (Duty to adopt provisions of domestic law), 8 (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.

FIFTH CLAUSE

INTERPRETATION

The meaning and scope of this Agreement shall be interpreted in light of Articles 29 and 30 of the American Convention on Human Rights, where relevant, and of the principle of good faith. In case of uncertainty or disagreement between the parties over the content of this Agreement,

the Inter-American Commission on Human Rights shall be the one to decide on its interpretation. It is also responsible for monitoring compliance with it, and the parties are obligated to report every four months concerning its status and compliance.

SIXTH CLAUSE

APPROVAL BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (IACHR)

The instant Friendly Settlement Agreement is subject to approval by the Inter-American Commission on Human Rights. The Peruvian State pledges to request such approval expeditiously and, once it has been obtained, to so inform the National Council of the Magistracy (CNM) so that it can proceed in accordance with the second clause and reserve the corresponding slots for the judicial officials who will participate in the New Evaluation and Reconfirmation Process.

SEVENTH CLAUSE

ACCEPTANCE

The parties to the signing of this Friendly Settlement Agreement freely and voluntarily express their agreement with and acceptance of each and every one of its clauses, and state for the record that it thus puts an end to the dispute in the particulars of the agreement, as well as to any complaint concerning the responsibility of the Peruvian State in the violation of the petitioners' human rights.

EIGHTH CLAUSE

EXTENSION OF THE AGREEMENT IN THE MOST FAVORABLE MANNER

The parties state for the record that should the State, following the signing of this Friendly Settlement Agreement, grant more favorable conditions to other petitioners who are in the same legal situation, such new conditions shall also extend to those who have signed the instant Friendly Settlement Agreement.

13. The Commission understands that, in keeping with the object and purpose of the American Convention and, in particular, in view of the consensual nature of the friendly settlement procedure, it is permissible for a petition with multiple victims to arrive at an agreement involving some of them and not others.

14. With respect to petitions 758-01, 764-01, 4394-02, 965-03, 1-04, 156-04 and 395-06, all of the alleged victims are included in the Friendly Settlement Agreement. Therefore, the Commission shall proceed to declare the processing of those petitions closed.

15. With respect to petitions 33-03, 119-03, 137-04 and 571-04, in which only some of the alleged victims are included in the Friendly Settlement Agreement, the Commission declares the proceedings closed in relation to those victims who signed the agreement and, at the same time, orders that the process continue, in the stage in which it is found, in relation to the alleged victims not included in the agreement.

16. The agreement transcribed is fully compatible with the obligations derived from the American Convention and is therefore approved.

17. At the same time, the Commission cannot help but note and appreciate that the State has repeatedly acknowledged its international responsibility for violation of the human rights of the persons who were subject to the reconfirmation process carried out by the National Council of the Magistracy, and that the State has signed multiple friendly settlement agreements with a large number of individual victims. Nevertheless, according to information received by the IACHR, no solution has yet been reached concerning a group of magistrates and prosecutors who are essentially in the same position. The Commission understands that the subsidiary nature of the inter-American human rights system requires that the State, in light of the acknowledgment of international responsibility and the multiple friendly settlement agreements approved by this Commission, adopt a comprehensive solution at the domestic level to the situation of all the prosecutors and magistrates who were not reconfirmed. To that end, pursuant to Article 41 of the American Convention, the Commission requests that the State submit to it, within a period of one month counted from the date of notification of the instant report, a proposed comprehensive solution to the situation of all the prosecutors and magistrates who were not reconfirmed.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To approve the terms of the Friendly Settlement Agreement signed by the parties on January 15, 2007.
2. To continue to monitor and oversee compliance with each of the points in the friendly settlement agreement and, in this context, to remind the parties of their obligation to report to the IACHR every three months on their compliance with the instant friendly settlement agreement.
3. To declare the processing of petitions 758-01, 764-01, 4394-02, 965-03, 1-04, 156-04 and 395-06 closed.
4. To call upon the State to find a comprehensive solution to the problem of judges not reconfirmed by the National Council of the Magistracy, and to request the State to submit to the Commission, within a period of one month counted from the date of notification of the instant report, a proposed comprehensive solution to the situation of all the prosecutors and magistrates who were not reconfirmed.
5. 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 27th day of the month of July, 2007.
(Signed): Florentín Meléndez, President; Paolo G. Carozza, First Vice-President; Víctor E. Abramovich, Second Vice-President; Evelio Fernández Arévalos, Clare K. Roberts and Freddy Gutiérrez, Commissioners.