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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 20/08; Petition 494-04
Session: Hundred Thirty-First Regular Session (3 – 14 March 2008)
Title/Style of Cause: Romeo Edgardo Vargas Romero v. Peru
Doc. Type: Decision
Decided by: Chairman: Paolo Carozza;
First Vice-Chairwoman: Luz Patricia Mejia Guerrero;
Second Vice-Chairman: Felipe Gonzalez;
Commissioners: Florentin Melendez, Victor E. Abramovich, Clare K. Roberts.
Dated: 13 March 2008
Citation: Vargas Romero v. Peru, Petition 494-04, Inter-Am. C.H.R., Report No. 20/08, OEA/Ser.L/V/II.134, doc. 5 rev. 1 (2008)

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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 victim and his petition related to the process of confirmation of judges and prosecutors conducted by the Consejo Nacional de la Magistratura [National Judicial Council] (CNM), regarding which a friendly settlement agreement has 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 RS N° 261-2005-JUS signed by the Minister of Justice on April 20, 2007 and Romeo Edgardo Vargas Romero, a judge who was not confirmed by the CNM. In addition, the Commission hereby approves the terms of the Agreement and orders that this report be published.

II. HAVING CONSIDERED THE FOLLOWING FACTS:

2. That Romeo Edgardo Vargas Romero, alleged victim and petitioner in petition 494-04, signed a Friendly Settlement Agreement with the Peruvian State on April 20, 2007, which was submitted to the IACHR on December 13, 2007.
3. That, since 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 “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 accordance with Article 1(1) of this same international instrument.

5. That the violations reported are related to alleged irregularities committed by the CNM in the proceedings leading to 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 CNM,[FN1] and that therefore, they generally argue, the exception provided for by sub-paragraph (a) of paragraph 2 of Article 46 of the Convention is applicable to their cases.

[FN1] Pursuant to Article 142 of the 1993 Constitution, in concordance with Article 1 of the Organic Law of the National Judicial Council, Law N° 26397, the decisions of the 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 of the alleged victims had lodged amparo petitions [for the protection of constitutional rights] within their domestic jurisdiction.

9. That some of the alleged victims lodged their complaints with the IACHR before a final judgment on the amparo petitions was handed down by the Constitutional Court.

10. That the petitioners that have applied for amparo proceedings can be classified into two groups: first, those judges and prosecutors who received a judgment from 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 second, those judges and prosecutors who received a judgment from 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 N° 50/06[FN2], 109/06[FN3], 20/07,[FN4] and 71/07,[FN5] respectively approved during the 124th, 126th, 127th, and 128th Regular Sessions of the Commission, in which friendly settlement agreements, identical to those arrived at in the above-mentioned petition, were considered and approved.

[FN2] Report N° 50/06, Petition 711-01 and others, Friendly Settlement, Miguel Grimaldo Castañeda Sánchez et al, March 15, 2006.

[FN3] Report N° 109/06, Petition 33-03 and others, Friendly Settlement, Alejandro Espino et al, October 21, 2006.

[FN4] Report N° 20/07, Petition 732-01 and others, Friendly Settlement, Eulogio Paz Melgarejo et al, March 9, 2007.

[FN5] Report N° 71/07, Petition 758-01 and others, Friendly Settlement, Hernán Atilio Aguirre Moreno et al, July 27, 2007.

IV. WHEREAS

12. By Supreme Decision N° 261/2005/JUS dated April 20, 2007, the State of Peru and the alleged victim in the aforementioned petition, arrived at the following Friendly Settlement Agreement:

FRIENDLY SETTLEMENT AGREEMENT: R.S. N° 261/2005/JUS (4/20/07)

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 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 proceedings, 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 judge is hereby reinstated with the following effects:

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

The National Judicial Council will restore his title within fifteen (15) days following the approval of the instant Friendly Settlement Agreement by the Inter-American Commission on 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 to his original position within the fifteen days following restoration of his title. Should his original position not be available, at the judge's request, he shall be reinstated in a vacant position of the same level in the same Judicial District, or in another one. In this case, the judge will have the first option to return to his original position at the time a vacancy appears.

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

2.2.1 Recognition of time in service.

The Peruvian State undertakes the commitment to recognize as days of service the time spent removed from his position, counted from the date of the decision on non-confirmation, for purposes of calculating 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 to another Judicial District, their years of work shall be recognized for all legal effects in their new seats.

2.2.2 Recognition of the right to domestic recourse.

The Peruvian State will defer 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.

2.3 Expenses and costs of the proceedings.

The Peruvian State agrees to pay petitioners who abide 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 processing of his petition.

2.4 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 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 hold a ceremony of public apology in favor of the reinstated judges.

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 Transitory 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. The Commission will also verify compliance; to that end, the parties are obliged to report on the status and compliance with this agreement every four months.

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 to 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 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 who find themselves in the same legal situation, these new conditions shall also be applied to those who have 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 is permissible for an agreement to be reached with some of the victims and not with others.

14. That Mr. Romeo Edgardo Vargas Romero, petitioner and alleged victim in petition number 494-04, has signed a Friendly Settlement Agreement with the Peruvian State. Consequently, the processing of the part of the petition related to him shall be ended.

15. That for the alleged victims in petition 494-04 who have not yet signed a Friendly Settlement Agreement with the State, processing of the petition will continue from its current stage.

16. That the agreement transcribed herein 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 and commend that the State has repeatedly 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 and that the State has signed many Friendly Settlement Agreements with numerous individual victims. However, and in keeping with the information received by the Commission, the situation of a group of judges and prosecutors in essentially the same conditions has not yet been resolved. The Commission understands that the subsidiary nature of the inter-American system of human rights requires that, given its acknowledgement of international responsibility and the numerous Friendly Settlement Agreements approved by this Commission, the State should adopt a comprehensive domestic solution to resolve the status of all the prosecutors and judges who were not confirmed. To this end, and in accordance with Article 41 of the American Convention, the Commission requests that within one month of notification of this report, the

State submit to the Commission a proposal for a comprehensive solution to resolve the status of all the prosecutors and judges who were not confirmed.

V. DECIDES:

1. To approve the terms of the Friendly Settlement Agreement signed by the parties on April 20, 2007.
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, of their compliance with this friendly settlement.
3. To call upon the State to attain a comprehensive solution to the problem of non-confirmation by the National Judicial Council, and request that within one month of notification of this report, it present to the Commission a proposal for a comprehensive solution for all of the judges and prosecutors who were not confirmed.
4. 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 13th day of the month of March, 2008.
(Signed): Paolo G. Carozza, Chairman; Luz Patricia Mejía Guerrero, First Vice-Chairwoman; Felipe González, Second Vice-Chairman; Florentín Meléndez, Victor E. Abramovich y Clare K. Roberts, members of the Commission.