

REPORT No. 29/10
DECISION TO ARCHIVE
CASE 12.036
PERU
March 16, 2010

ALLEGED VICTIM: Raúl Alfonso Valdez Roca

PETITIONER: Estudio Jurídico de la Fuente Rondón [De la Fuente Rondón Law Firm]

ALLEGED VIOLATIONS: Articles 8, 25, and 1.1 of the American Convention on Human Rights

DATE PROCESSING BEGAN: May 18, 1998

I. POSITION OF THE PETITIONER

1. The petitioner alleged that on April 24, 1992, the alleged victim was dismissed from his position as Judge of the Superior Court of Justice of Lima, a position he had held since June 1982. He said the dismissal was effected without any explanation of grounds by Decree Law No. 25446.

2. He said that Decree law No. 25454 set aside constitutional writ actions (*acción de amparo*) aimed at contesting the collective dismissal Decree Law No. 25446. He asserted that the impossibility of filing these actions ended with the entry into force of the Peruvian Constitution of December 31, 1993. He mentioned that on March 11, 1994, the alleged victim filed a constitutional writ action before the Constitutional Tribunal.

3. The petitioner indicated that pursuant to Article 37 of the Law of Habeas Corpus and Protection of Constitutional Rights (*Amparo*), "the exercise of an action of *amparo* shall expire 60 business days after the event that gave rise to it, provided that on that date the party concerned was in a position to file the action." He pointed out that the same provision establishes that if on the date of that event it was impossible to file the *amparo* suit, "the time allowed shall be calculated from the moment the impediment was removed." He added that the 60-day period allowed for Raúl Alfonso Valdez to file an *amparo* suit against dismissal from his job commenced on December 31, 1993, with the entry into force of the new Political Constitution.

4. The petitioner said that although he had filed an *amparo* appeal 51 business days after promulgation of the Political Constitution of 1993, the Constitutional Tribunal dismissed it in final instance on November 12, 1997 on the grounds that it considered it extemporaneous. He said that it transpired from the preambular paragraphs of the resolution that the Constitutional Tribunal had used calendar days to calculate the time allowed for filing an *amparo* suit, even though Article 37 of Law 23506 specifies a period of 60 business days. He stated that the aforementioned decision of November 12, 1997 contradicted Article 61 of the Organic law of the Constitutional Tribunal which defined business days as "Monday through Friday of each week, except non-business holidays, in accordance with law."¹

5. According to the petitioner, Raúl Alfonso Valdez Roca lodged a request for clarification with the Constitutional Tribunal in order to correct the alleged clerical error in calculating the 60-day period established in Article 37 of Law 23506. However, he alleged that the Constitutional Tribunal dismissed the request for clarification in an interlocutory writ of December 22, 1997.

¹ Communication from the petitioner received on May 18, 1998, pp. 6 and 7.

II. POSITION OF THE STATE

6. The State ratified the Constitutional Tribunal's understanding that the amparo suit filed by Mr. Raúl Alfonso Valdez Roca was extemporaneous.

7. It stated that the expiration of the time allowed for filing such a suit was a logical consequence of the legal effects produced by the time elapsed and could not be construed as a violation of rights protected by the American Convention. Accordingly, the State requested that the petition to be declared inadmissible.

III. PROCESSING BY THE IACHR

8. The initial petition was received on May 18, 1998 and registered under the number 12.036. On July 17, 1998, it was forwarded to the State, which was given three months to reply.

9. On October 15, 1998, the Commission received the reply by the State, which it forwarded to the petitioner on November 3, 1998. Thereafter the petitioner sent additional communications on December 7, 1998; July 6, 1999; January 21, June 10, November 14, and December 29, 2000; June 13, 2001; and October 25, 2002. For its part, the State made additional written statements on January 13, 1999 and October 5, 2000.

10. In view of the information posted on the Peruvian Judiciary's Internet Portal to the effect that Mr. Raúl Alfonso Valdez Roca had been reinstated as a judge,² on December 14, 2004 the IACHR requested an update from the petitioner as to whether the grounds for his claim subsisted. On December 31, 2008, the petitioner was told that the file containing his petition would be archived unless update information was provided or an indication that the grounds for the petition to the IACHR subsisted.

IV. BASIS FOR THE DECISION TO ARCHIVE

11. Both Article 48.1 (b) of the American Convention on Human Rights and Article 42.1 of the Rules of Procedure of the Inter-American Commission on Human Rights provide that in the processing of a petition once the observations have been received or the period established has elapsed with no observations received, the IACHR shall ascertain whether the grounds for the petition or communication exist or subsist, and if they do not it shall order the case archived.

12. The initial petition raised the question of an alleged arbitrary dismissal of Mr. Raúl Alfonso Valdez Roca from his position as Judge of the Superior Court of Justice of Lima and of alleged violations of judicial guarantees in the constitutional rights protection suit filed with a view to his reinstatement.

13. The Inter-American Commission has sent requests to the petitioner asking him to say whether or not Mr. Raúl Alfonso Valdez has been reinstated as a judge and whether he considers that the grounds for the petition submitted on May 18, 1998 subsist. As of the date this report was adopted, the petitioner had not replied to those requests for information or shown interest in continuing with the processing of the case.

14. In view of the fact that more than seven years have elapsed since the petitioner's last communication and given the absence of updated information for making a decision on whether or not the petition should be admitted, the Commission decides to archive it in accordance with Article 48.1.b of the American Convention and Article 42 of its Rules of Procedure.

Done and signed in the city of Washington, D.C., on the 16th day of the month of March, 2010.
(Signed: Felipe González, President; Paulo Sergio Pinheiro, First Vice-President; Dinah Shelton, Second

² See <http://www.pj.gob.pe/CorteSuprema/SalasSupremas/SPT2/index.asp>

Vice-President; María Silvia Guillén, José de Jesús Orozco Henríquez; Rodrigo Escobar Gil, Commissioners).