

**REPORT No. 17/11**  
PETITION 277-01  
INADMISSIBILITY  
JOSÉ LUIS FORZZANI BALLARDO  
PERU  
March 23, 2011

**I. RESUMEN**

1. On May 1, 2001, the Inter-American Commission on Human Rights (hereinafter “the Commission,” “the IACHR,” or the “the Inter-American Commission”) received a petition submitted on his own behalf by José Luis Forzzani Ballardo (hereinafter also “the petitioner” or “the alleged victim”), which alleges that the Republic of Peru (hereinafter “Peru,” “the Peruvian State,” or “the State”) is responsible for the violation of rights protected by the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”). The petitioner affirmed that on September 10, 1993, the First Civil Magistrate of Callao issued a decision requiring the Pio XII Savings and Credit Union to pay him over 7,800 new soles. He stated that in February 1994 the credit union began liquidation proceedings and, therefore, the magistrate ordered that execution of the judgment of September 10, 1993, be suspended. He stated that such decision stemmed from pressure from the Executive Council of the Judiciary and from a legislative decree issued improperly by then-President Alberto Fujimori. He stated that the Peruvian courts rejected his motions to set aside and appeal the decision to suspend execution of the judgment and that the last such motion was ruled upon on April 19, 1996.

2. For its part, the State maintained that, under applicable law, the enforcement of judicial rulings against institutions in liquidation proceedings is suspended and beneficiaries must participate in the proceedings for capital restructuring and payment of creditors in the appropriate order of precedence. It stated that the requests by Mr. José Luis Forzzani that execution of the rulings issued in his favor on September 10, 1993, be resumed were all rejected, and the final decision was issued on April 19, 1996. Finally, the State affirmed that the petition was submitted to the IACHR beyond the six-month deadline established by Article 46(1)(b) of the Convention and that the events described therein do not meet the requirements set forth in Article 47(b) of the Convention.

3. After analyzing the positions of the parties, the Commission concluded that it is competent to hear the complaint but that it does not meet the requirement set forth in Article 46(1)(b) of the American Convention. The Commission decided to notify the parties of this Report on Inadmissibility, to publish it, and to include it in the Commission’s Annual Report.

**II. PROCEEDINGS BEFORE THE COMMISSION**

4. On May 1, 2001, the IACHR received the petition and assigned it number 277-01. The petitioner submitted additional information on February 7 and July 12, 2005, and on August 6, 2008. On May 11, 2009, the relevant parts of that documentation were transmitted to the State, which was given a period of two months to submit its reply, in keeping with the Rules of Procedure of the IACHR.

5. The State presented its reply on May 11, 2009, and sent additional communications on August 13, 2009, and on April 16 and November 11, 2010. For his part, the petitioner sent additional information on December 15, 2009, August 15, 2010, and March 2, 2011.

### III. POSITIONS OF THE PARTIES

#### A. The petitioner

6. The petitioner affirmed that for several years he made deposits at the Pio XII Savings and Credit Union (hereinafter also "the CACP") for a total of 7,800 new soles. He indicated that, in light of the credit union's refusal to turn over the amounts regularly deposited in his account, on August 9, 1993, he filed a civil suit with the First Civil Magistrate of Callao. He stated that the credit union did not issue a reply and, therefore, the motion was declared well-founded on September 10, 1993. The petitioner indicated that, during the judgment enforcement process, the CACP decided to dissolve and the request was entertained by the Office of the Banking and Insurance Superintendent in May 1994.

7. According to the allegations, on September 2, 1994, the judge hearing the case ordered that the execution of the ruling issued in favor of the alleged victim be suspended. The petition stated that such decision was based upon a circular from the Executive Council of the Judiciary, no. 028-94, which instructed the judges and chambers of the Superior Courts of Justice for civil matters to adhere to Articles 194 and 195 of Legislative Decree No. 770—General Banking, Financial, and Insurance Institutions Act (hereinafter "DL 770"). Those provisions of DL 770 provide as follows:

Article 194. The money and assets of a company or institution of the financial system declared to be in dissolution or liquidation proceedings are not subject to seizure or attachments, either preventive or definitive, or to any other precautionary measure. Seizure and attachments decreed prior to the date of such a decision of the Office of the Superintendent should be removed on that basis alone.

Article 195. As of the date of publication of a decision to dissolve or liquidate a company or institution of the financial system, it is forbidden:

- a. To institute a suit or proceedings to compel the company or institution to disburse sums which it controls.
- b. To pursue the execution of decisions issued against it.
- c. To place encumbrances on any of its assets as a guarantee of any of its obligations.
- d. To effect payments, advances, or remuneration or assume obligations on its behalf with funds or assets that belong to the institution and are controlled by third parties<sup>1</sup>.

8. The petitioner indicated that he lodged motions to set aside and appeal the ruling issued by the First Civil Magistrate of Callao on September 2, 1994, which motions were rejected. He stated that, by way of circular 028-94, the Executive Council of the Judiciary unduly interfered with the authority of the First Civil Magistrate of Callao. He stated that he lodged complaints against the Executive Council of the Judiciary and the First Civil Magistrate of Callao, but that a decision of November 9, 1994, ruled that grounds did not exist for a suit against the magistrates named in the complaints.

9. According to the petitioner, in a judgment of April 19, 1996, the First Civil Magistrate of Callao rejected a motion for appeal on the grounds that the appropriate court fee had not been paid. In that connection, the petitioner affirmed that, according to the 1993 Constitution, justice must be administered without charges, and that, by requiring payment of fees in order to lodge an appeal, the magistrate in question deprived him of access to remedies under domestic jurisdiction. He concluded that the exceptions to the rule of prior exhaustion of remedies established in Article 46(2), (b), and (c), of the American Convention apply to the instant case.

10. The petitioner affirmed that DL 770 was enacted on October 28, 1993, by then-President Alberto Fujimori, in violation of the provisions of the 1979 Peruvian Constitution, which was in effect at that time. He stated that the 1979 Constitution and the 1993 Constitution both establish that the execution of a ruling with the status of *res judicata* is compulsory and, therefore, a legislative decree could not

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<sup>1</sup> Petitioner's initial writ, received by the IACHR on May 1, 2001, attachments, excerpts from Legislative Decree No. 770.

change the effect of the ruling issued by the First Civil Magistrate of Callao on September 10, 1993. He stated that Articles 194 and 195 of DL 770 not only are constitutionally invalid but also cannot be applied retroactively with respect to final rulings issued prior to the entry into force of that decree.

11. The petitioner described and attached copies of laws, decrees, procedural codes, codes of substantive law, excerpts from the 1979 and 1993 Constitutions, press clippings on various matters, and a disciplinary complaint against the First Civil Magistrate of Callao. Finally, he affirmed that the Peruvian State is responsible for the violation of the rights protected under Articles 8, 21, 24, and 25 of the American Convention.

## **B. The State**

12. The State gave an account similar to that of the petitioner regarding the decisions of the First Civil Magistrate of Callao concerning the civil suit lodged by Mr. José Luis Forzzani Ballardo against the Pio XII Savings and Credit Union. It indicated that in February 1994 the credit union began liquidation proceedings and that on September 2 of that year the First Civil Magistrate of Callao ruled as follows:

Having considered the proceedings of case file nine hundred thirteen of the year nineteen hundred ninety-three, which show that the credit union named in the suit decided to dissolve on February 5, 1994; that the Office of the Banking and Insurance Superintendent ruled in favor of the query by its board of directors on May 11 of this year; (...) and therefore the application of circular 28-94 of the Executive Council of the Judiciary (...) dated August 9, 1994, which orders magistrates to apply Articles 194 and 195 of DL 770, is in order in this case, consequently SUSPENDS at its present state the enforcement of the ruling in this proceeding.

13. The State alleged that on September 7, 1994, the alleged victim lodged an appeal against that decision, which was granted without suspension on September 27 of that year. It maintained that on September 23 Mr. Forzzani Ballardo presented a motion to set aside the same September 2, 1994, ruling of the First Civil Magistrate of Callao, which motion was rejected on October 17, 1994. It indicated that the alleged victim lodged an appeal against that decision on October 24, 1994, and a second motion on April 17, 1996, which were rejected on November 11, 1994, and April 19, 1996, respectively. According to the information submitted, the alleged victim was advised of the April 19, 1996, decision on April 30 of that year.

14. The State affirmed that, according to Article 195 of DL 770, when an institution is declared to be in liquidation proceedings, it is not possible to enforce rulings against it. It added that, as a member of the group of co-creditors, the alleged victim should have appeared before the liquidation board of the Pio XII Savings and Credit Union and participated in the capital restructuring process as provided in applicable law.

15. The State indicated that the ruling issued in the final instance by the domestic judicial authorities is dated April 19, 1996, while the petition was received by the IACHR on May 1, 2001. It maintained, therefore, that the petition is inadmissible in that it does not comply with the six-month deadline established by Article 46(1)(b) of the Convention. Lastly, the State affirmed that the events described in the petition would not constitute a violation of rights protected in the Convention; and it requested that the IACHR declare the petition inadmissible under Article 47(b) of that instrument.

## **IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY**

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

16. The petitioner is entitled by Article 44 of the American Convention to submit complaints to the Commission. The alleged victim is an individual, in respect of whom the Peruvian State undertook to respect and safeguard the rights enshrined in the Convention. Peru, for its part, ratified the American Convention on July 28, 1978. Therefore, the Commission is competent *ratione personae* to hear the complaint.

17. The Commission is competent *ratione materiae* and *ratione loci*, because the petition alleges violations of rights protected by the American Convention and occurring within the territory of a state party to that treaty.

18. Finally, the Commission is competent *ratione temporis*, because the obligation to respect and guarantee the rights protected by the American Convention was already in force for the State at the time of the events alleged in the petition.

## **B. Exhaustion of domestic remedies**

19. Article 46(1)(a) of the American Convention provides that, in order for a complaint presented to the Inter-American Commission, in keeping with Article 44 of the Convention, to be admissible, the remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to allow national authorities to consider the alleged violation of a protected right and, if appropriate, have the opportunity to resolve it before it is considered by an international body.

20. This petition alleges a continuing failure to enforce the judgment of September 10, 1993, in which the First Civil Magistrate of Callao ordered the Pio XII Savings and Credit Union to pay a certain sum of money to Mr. José Luis Forzzani. The available information indicates that the enforcement of that judgment was voided by a decision issued on September 2, 1994, by that same judicial body. The petitioner affirmed that “the enforcement being suspended prevents him from taking any action; therefore he cannot issue a claim of any kind (...).” For its part, the State affirmed that the judgment by the First Civil Magistrate of Callao that terminated the execution of the judgment is dated April 19, 1996, and notice of that judgment was issued to Mr. Forzzani Ballardo on April 30 of that year. In that respect, it argued that the petition does not meet the requirement set forth in Article 46(1)(b) of the Convention.

21. In cases of alleged lack of compliance with decisions related to indemnity obligations of private institutions, the IACHR has stated that it is not in a position to replace judicial authorities in deciding matters of domestic law, such as seizure, the auctioning of assets, the order of precedence, and other means of execution. In that connection, it has indicated that, before filling a case to an international body, the alleged victims should, in principle, pursue means of execution in accordance with domestic law<sup>2</sup>.

22. In the matter *sub judice*, the process of execution of the judgment in favor of Mr. Forzzani Ballardo was declared null on September 2, 1994, under the terms of Article 195 of DL 770, after which he pursued a series of remedies intended to reinstate that process. The information submitted indicates that the First Civil Magistrate of Callao rejected all the remedies pursued by the alleged victim and that the last judicial act connected with the motion to proceed with that execution process was carried out on April 19, 1996, as follows:

[...] considering that the foregoing motion does not clearly and precisely identify arguments of fact or of law or the error committed in the decision appealed, that it does not specify the nature of the offense and provide grounds for the challenge, and that the appropriate court fee has not been attached, therefore (...) finds this appeal inadmissible<sup>3</sup>.

23. Accordingly, the IACHR finds that the remedies under domestic jurisdiction, intended to challenge the suspension of the September 10, 1993, ruling, were exhausted with the April 19, 1996, decision of the First Civil Magistrate.

<sup>2</sup> IACHR, Report N° 158/10, Petition 167-99, Inadmissibility, Members of the Union of Workers of *Unión Productores de Leche S.A.*, Peru, November 1, 2010, par. 24.

<sup>3</sup> Petitioner’s communication, received by the IACHR on December 15, 2009, attachments, certificate of notification with receipt registered April 30, 1996, and, attached, the decision of the First Civil Magistrate of Callao, dated April 19, 1996.

### C. Deadline for presentation

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

25. As stated in paragraph 23 *supra*, remedies under domestic jurisdiction were exhausted on April 19, 1996, by decision of the First Civil Magistrate, which rejected the appeal submitted by Mr. José Luis Forzzani Ballardó. According to the information provided by the parties, that decision was conveyed to the alleged victim on April 30, 1996. Since the present petition was received by the IACHR on May 1, 2001, the requirement set forth in Article 46(1)(b) of the American Convention has not been met.

26. The Commission refrains from examining the other admissibility requirements provided in the Convention, as they are extraneous here.<sup>4</sup>

### V. CONCLUSIONS

27. On the basis of the foregoing arguments of fact and of law, the Inter-American Commission finds this case inadmissible in that it does not meet the requirement set forth in Article 46(1)(b) of the American Convention; therefore,

#### THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

#### DECIDES:

1. To declare this case inadmissible in that it does not meet the requirement set forth in Article 46(1)(b) of the American Convention.
2. To notify the State and the petitioners of this decision.
3. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 23<sup>rd</sup> day of March 2011. (Signed): Dinah Shelton, President; José de Jesús Orozco Henríquez, First Vice-President; Rodrigo Escobar Gil, Second Vice-President; Paulo Sérgio Pinheiro, Felipe González, Luz Patricia Mejía Guerrero, and María Silvia Guillén, Commission Members.

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<sup>4</sup> IACHR, Report No. 14/10, Petition 3576-02, Inadmissibility, Workers Dismissed from Lanificio del Perú S.A., Peru, March 16, 2010, para. 35; Report No. 135/09, Petition 291-05, Inadmissibility, Jaime Salinas Sedó, November 12, 2009, Peru, para. 37 and Report No. 42/09, Petition 443-03, Inadmissibility, David José Ríos Martínez, Peru, March 27, 2009, para. 38.