

**REPORT N° 47/02<sup>1</sup>**

ADMISSIBILITY

PETITION 12.357

PERU

NATIONAL ASSOCIATION OF DISCHARGED AND RETIRED STAFF OF THE OFFICE OF THE  
COMPTROLLER GENERAL OF THE REPUBLIC OF PERU

[*ASOCIACIÓN NACIONAL DE DESANTES Y JUBILADOS DE LA CONTRALORÍA GENERAL DE LA  
REPÚBLICA DEL PERÚ*]

October 9, 2002

**I. SUMMARY**

1. By a petition lodged with the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") on November 12, 1998, and enlarged upon on January 24, 2000, the members of the National Association of Discharged and Retired Staff of the Office of the Comptroller General of the Republic of Peru [*Asociación Nacional de Cesantes y Jubilados de la Contraloría General de la República del Perú*] and the Labor Advisory Center [*Centro de Asesoría Laboral*] (CEDAL) (hereinafter "the petitioners") denounced that by its failure to enforce judgments of Peru's Constitutional Court, the Republic of Peru (hereinafter "Peru," "the State," or "the Peruvian State") had violated the right to private property, the right to a fair trial and the right to judicial protection, recognized in Articles 21, 8 and 25 of the American Convention on Human Rights (hereinafter the "Convention" or the "American Convention"), to the detriment of Isabel Acevedo León and other members of that Association, and had thereby also violated its generic duty under Article 1(1) of the Convention to protect the rights recognized therein and to guarantee their free and full exercise to all persons subject to its jurisdiction.

2. The Peruvian State did not file any objection challenging the admissibility of the petition under study.

3. Pursuant to Articles 45 and 47 of the Convention, the Commission hereby decides to admit the petition in regard to the alleged violations of Articles 8, 21, 25 and 1(1) of the American Convention and to institute proceedings on the merits of the case. The Commission also decides to notify the parties of its decision, to publish it, and to include it in its Annual Report to the OAS General Assembly.

**II. PROCEEDINGS WITH THE COMMISSION**

4. On January 26, 2001, the Commission forwarded the pertinent parts of the petition to the Peruvian State and asked that it supply relevant information within a period of 90 days. Peru replied on April 27, 2001. The petitioners provided additional information on June 28, 2001.

**III. POSITIONS OF THE PARTIES**

**A. The petitioners' position**

5. The petitioners argue that Mrs. Isabel Acevedo León and the other petitioners spent their active working years as staff members of the Office of the Comptroller General of the Republic of Peru. Since reaching retirement age, and having met the necessary legal requirements, they had been enjoying—for many years in some cases—the right to a severance and retirement pension that was readjusted and renewed to keep pace with the salaries and wages, benefits and bonuses received by that institution's active employees. This was all dictated by the retirement and pension system regulated by decree law 20,530. As discharged or retired

---

<sup>1</sup> Pursuant to the terms of Article 19(2) of the Regulations of the Commission, Commissioner Susan Villarán, a national of Peru, did not participate in the discussion or decision on the present case

employees of the Office of the Comptroller General of the Republic of Peru, they were all enrolled in this retirement and pension plan.

6. With passage of Decree Law N° 25,597, dated July 7, 1992, and by virtue of Supreme Decree N° 036-93-EF of March 17, 1993, payment of their pensions was transferred to the Ministry of Economy and Finance. With that, the petitioners were denied their right to have their pensions pegged to the salaries and bonuses of the active staff members of the Comptroller General's Office; instead, their pensions were pegged to the pay scale at the Ministry of Economy and Defense.

7. The petitioners further contend that on May 27, 1993, they teamed up with the Association of Discharged and Retired Staff of the Office of the Comptroller General—of which Mrs. Isabel Acevedo León is president—and filed a petition of *amparo* with the Sixth Civil Court of Lima, asserting their right to have the full-parity pension, severance and retirement system reinstated, i.e., the system that is readjusted and renewed in accordance with Decree Law N° 20,530. They also requested that Article 5 of Supreme Decree N° 035-93-EF not be enforced. Under that Article, the Peruvian State denied them their legally acquired right to receive the same bonuses and benefits that active staff of the Comptroller General's Office receive, in keeping with the law on the right to the parity adjustable pension guaranteed under Decree Law N° 23,495.

8. The petitioners report that Lima's Sixth Lower Court denied the petition of *amparo* on July 9, 1993. But that ruling was subsequently overturned by the First Civil Law Chamber of Lima Superior Court on December 14, 1993, which found that the provisions of Articles 9.c and 13 of Decree Law 25,597 and Article 5 of Supreme Decree N° 036-93 EF did not apply to the petitioners. It therefore ordered the Office of the Comptroller General to pay the Association members the pensions, bonuses and benefits to which they were entitled.

9. When the Office of the Comptroller filed an appeal to have the Superior Court's ruling vacated, the Constitutional and Social Law Chamber of the Supreme Court issued a ruling on October 3, 1994, wherein it declared the Superior Court's December 14, 1993 ruling null and void, and reaffirmed the lower court ruling. The petitioners then appealed that ruling by filing an appeal with the Constitutional Tribunal, whose October 21, 1997 judgment reversed the judgment handed down by the Constitutional and Social Law Chamber of the Supreme Court and confirmed in part the judgment delivered by the First Civil Law Chamber of the Lima Superior Court, which had upheld the legal grounds of the complaint and expressly ordered that "the Office of the Comptroller General of the Republic shall pay the Association members who are the plaintiffs in this case the same salaries, bonuses and benefits paid to active employees of that office performing functions identical, similar or equivalent to those that the discharged or retired staff members performed."

10. Upon notification of the Constitutional Tribunal's judgment on December 15, 1997, the procedure for enforcement of that judgment was instituted in the corresponding public law court. By a ruling dated June 25, 1998, that court ordered that the judgment be enforced. Since then, successive memoranda, injunctions and other measures have been used to get the Comptroller's Office to comply with the Court's judgment, all to no avail thus far.

11. The petitioners contend that the judgement's enforcement has been further obstructed since February 12, 1999, when the Superior Court's Transitional Corporatist Public Law Chamber declared null and void all steps taken to execute the Constitutional Court's ruling of October 21, 1997, "while reserving the right of the Association of Discharged and Retired Staff of the Office of the Comptroller General, to be exercised in the manner prescribed by law."

12. The petitioners state that on May 27, 1999, they filed a remedy of *amparo* to challenge the decision of the Transitional Corporatist Public Law Chamber on the grounds that their right to effective judicial protection had been violated because the principle of *res judicata* and the obligation to comply with court rulings had been breached. On January 26, 2001, the

Constitutional Court granted their petition of *amparo* and thereby rendered inapplicable the ruling delivered by the Lima Superior Court's Transitional Corporatist Public Law Chamber on February 12, 1999. It held that the judgment's enforcement was to proceed, which meant that the respective judicial body was to comply, immediately and unconditionally, with the order contained in the Constitutional Court's decision of October 21, 1997.

13. Thus, the petitioners argue that the ruling of the Constitutional Court became *res judicata* as of its issuance. Yet, despite repeated attempts to get the court ruling enforced, it has still not been executed. By its failure to enforce that court ruling, the petitioners contend that the Peruvian State has violated their right to property, their right to a fair trial and their right to effective judicial protection, recognized, respectively, in Articles 21, 8 and 25 of the American Convention, to the detriment of the members of the Association of Discharged and Retired Staff of the Office of the Comptroller General of the Republic of Peru.

## **B. The State's position**

14. The State has not challenged the admissibility of the petition under study.

15. The State alleges that the Office of the Comptroller General took several steps to comply with the court order. It asked the Ministry of Economy and Finance to put back into the budget of the Office of the Comptroller General, the appropriation necessary to cover the pensions of the discharged and retired staff of the Office of the Comptroller General, beginning with the 2001 budget. It also adopted a resolution ordering parity between discharged and retired staff of the Office of the Comptroller General and its active staff at various levels. However, it has not yet complied with the ruling of the Constitutional Court.

## **IV. ANALYSIS**

16. The Commission will now examine the requirements that the American Convention establishes for a petition's admissibility.

### **A. The Commission's competence *ratione materiae*, *ratione personae* and *ratione temporis***

17. The Commission is competent *ratione materiae* because the petition alleges violations of human rights protected by the American Convention.

18. Concerning its competence *ratione personae*, the Commission notes that the petitioners are charging the Peruvian State with violations of human rights recognized in the American Convention. Because Peru ratified that Convention on July 28, 1978, the Commission is competent *ratione personae* to take cognizance of this petition, by express provision of Article 33 of the Convention. The petitioners are non-governmental organizations legally recognized in Peru and, under Article 44 of the Convention, have the authority to file petitions with the Commission. Therefore, insofar as the petitioners are concerned, the Commission is competent *ratione personae* to take cognizance of this petition. The alleged victims are natural persons whose Convention-recognized rights Peru pledged to respect and guarantee. Therefore, in that respect the Commission is equally competent to hear the petition under study.

19. The Commission is competent *ratione loci* to hear this petition because the alleged violations of Convention-protected rights were said to have occurred within the territory of a State party to the Convention.

20. The IACHR is competent *ratione temporis* because by the time the facts alleged in the petition occurred, the obligation to respect and guarantee the rights established in the American Convention was already binding upon the Peruvian State.

## **B. The petition's admissibility requirements**

### **a. Exhaustion of local remedies**

21. The Commission observes that the question it must decide is whether or not the judgment delivered by Peru's Constitutional Court on October 21, 1997, on the *amparo* appeal filed by the National Association of Discharged and Retired Staff of the Office of the Comptroller General of the Republic was enforced.

22. The State never entered any objection regarding the requirement of exhaustion of local remedies. The Inter-American Court has held that "the objection asserting the non-exhaustion of domestic remedies, to be timely, must be made at an early stage of the proceedings by the State entitled to make it, lest a waiver of the requirement be presumed."<sup>2</sup> Hence, the Inter-American Commission presumes that the State tacitly waived the requirement that local remedies be exhausted, since it did not file an objection either within established legal time periods or at the first opportunity it had in the proceeding to lodge its objection, which was its response to the petition that initiated the case.

### **b. Time period for presentation**

23. In the petition under study, the Commission has established that the Peruvian State waived its right to argue that domestic remedies had not been exhausted. However, the Convention's requirement that domestic remedies be exhausted is independent of the requirement that the petition be lodged within six months following the judgment exhausting domestic remedies. The Commission must therefore decide whether this petition was submitted within a reasonable time. By virtue of the finding that the State tacitly waived the exhaustion of domestic remedies requirement, no specific date can be identified from which to calculate the six month period. The absence of an identifiable date does not relieve the Petitioner of the requirement to file in a timely manner. In this sense, the Commission, taking into account the particular circumstances of the present case, considers that the present petition was presented within a reasonable time.

24. Based on the foregoing, the requirement as to the deadline for lodging a petition, set forth in Article 46(1)(b) of the American Convention, does not apply in the instant case.

### **c. Duplication of proceeding and *res judicata***

25. It is the Commission's understanding that the subject of the petition is not pending in another international proceeding for settlement and is not substantially the same as a petition already examined by either the Commission or some other international organization. Hence, the requirements set forth in Articles 46(1)(c) and 47(d) are also satisfied.

### **d. Characterization of the facts**

26. The Commission considers that the petition lodged by the petitioners states facts that if true could constitute a violation of rights protected under the Convention since, as established above, the question put to the Commission is whether the failure to enforce the judgment of Peru's Constitutional Court implies the Peruvian State's violation of Articles 25, 8, 21 and 1(1) of the American Convention.

---

<sup>2</sup> IACtHR, Velázquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987, Series C, No. 1, para. 88; Fairén Garbí and Solís Corrales Case, Preliminary Objections, Judgment of June 26, 1987, Series C, No. 2, para. 87.

## **V. CONCLUSIONS**

27. The Commission, therefore, is competent to take cognizance of this petition, which, for the reasons stated above, is admissible under Articles 46 and 47 of the American Convention.

28. Therefore, based on the reasons of fact and of law herein given and without prejudging the merits of the case,

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, DECIDES:**

1. To declare admissible the petition in regard to the alleged violations of Articles 8, 25, 21 and 1(1) of the American Convention.
2. To notify the petitioners and the State of this decision.
3. To continue with the analysis of the merits of the case.
4. To place itself at the disposal of the parties with a view to arriving at a friendly settlement founded upon respect for the rights protected under the American Convention, and to invite the parties to express their views on the friendly settlement possibility.
5. To publish this decision and include it in the Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C., the 9<sup>th</sup> day of the month of October in the year 2002. Signed by Juan Méndez, President; Marta Altolaguirre, First Vice President; Robert K. Goldman; Julio Prado Vellejo, Clare K. Roberts and José Zalaquett, Commission members.