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**REPORT No. 70/16**

**PETITION 1339-07**

FRIENDLY SETTLEMENT

TITO GUIDO GALLEGOS GALLEGOS

PERU

Approved by the Commission at its session N° 2070 held on November 30, 2016  
159<sup>th</sup> Regular Period of Sessions

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Organization of  
American States

**REPORT No. 70/16**

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TITO GUIDO GALLEGOS GALLEGOS

PERU

NOVEMBER 30, 2016<sup>1</sup>

**I. SUMMARY**

1. On October 12, 2007, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition filed by Tito Guido Gallegos Gallegos (hereinafter “petitioner”), alleging the international responsibility of the Republic of Peru (hereinafter “the State” or “the Peruvian State”) for the alleged violations of the rights enshrined in Articles 8 (judicial guarantees) and 25 (judicial protection) of the American Convention on Human Rights, in keeping with Articles 1(1) (obligation to respect rights) and 2 (duty to adopt provisions of domestic law) of that treaty. The petitioner alleged that after seven years of working as a judge he was subjected to a process of evaluation and ratification in which his rights were violated and decided arbitrarily and without foundation that he not be ratified as a judge [with the title *Vocal de Superior*] of the Superior Court of Justice of Puno, and as a result was definitively separated from his position.

2. In 2015 the parties began to pursue a process of friendly settlement with the facilitation of the IACHR. The parties signed a friendly settlement agreement on October 26, 2016, in which they requested that the Commission approved the agreement.

3. In this friendly settlement report, as established in Article 49 of the Convention and Article 40(5) of the Commission’s Rules of Procedure, the facts alleged by the petitioners are described and the friendly settlement agreement, signed on October 26, 2016 by the petitioner and the representative of the Peruvian State, is transcribed. In addition, the agreement signed by the parties is approved and it was agreed to publish this report in the Annual Report of the IACHR to the General Assembly of the Organization of American States.

**II. PROCESSING BEFORE THE COMMISSION**

4. On October 12, 2007, the IACHR received a petition that was forwarded to the State on July 23, 2012.

5. The petitioner submitted additional information on January 8 and 10, May 14 and November 20, 2013; May 30, 2014; February 28, April 13, and October 21, 2015; and October 30 and November 1, 2016. That information was forwarded to the State.

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<sup>1</sup> Commissioner Francisco José Eguiguren Praeli, of Peruvian nationality, did not participate in the discussion or decision in the present case, in keeping with Article 17(2)(a) of the IACHR’s Rules of Procedure.

6. The State presented additional information on September 24 and November 26, 2012; April 16, 2013; July 14, 2015; and April 18 and October 27, 2016. That information was forwarded to the petitioner.

7. On October 27, 2016, the State reported that it had signed a friendly settlement agreement with the petitioner; that information was forwarded to the petitioner; and on October 30 and November 1, 2016, the petitioner asked that the Commission approved the friendly settlement agreement.

### III. THE FACTS ALLEGED

8. The petitioner alleged that he had worked as a judge since 1996, when he had participated in a national competitive hiring process that was set in motion to fill vacancies of judges with the title of *vocales superiores titulares* of the judicial branch for the judicial district of Puno. According to the petitioner, as a result of that process he was chosen as a judge [*Vocal*] of the Superior Court of the Judicial District of Puno through National Judicial Council Resolution No. 168-96-CNM, of October 30, 1996.

9. According to the petitioner, in the year 2000 he was designated President of the Superior Court of the Judicial District of Puno by the Executive Committee of the Judicial Branch, and served in the position without any difficulties. In addition, the petitioner stated that during the time he served as a judge he was not subject to any criminal or civil sanction, nor had he been subject to disciplinary measures or sanctions, accordingly he stated that he has had a clean professional record, maintaining a high level of judicial output and since 1998 holding the first place, in this regard, of all the judges of the judicial district.

10. The petitioner alleged that after the “self-coup” [*auto golpe*] of April 5, 1992 by former President Alberto Fujimori it was ordered that the Judicial Branch be reorganized and that by Decree Law No. 25446 of April 24, 1992 a large number of judges and prosecutors were dismissed without motivation, justification, or legal cause. In addition, the petitioner indicated that Decree Law 25,454 established that the *amparo* action could not be used to challenge the effects of the application of Decree Laws 25,442, 25,423, and 25,446.

11. The petitioner alleged that after seven years of working as a judge he was subjected to a process of evaluation and ratification in which he was not ratified in the position of judge (Vocal Superior) of the Superior Court of Justice of Puno, and consequently he was separated from the judicial career service, by Resolution No. 058-2004-CNM of the National Judicial Council on February 7, 2004. The petitioner alleged that the process of evaluation and ratification that culminated in an unfavorable decision had many failings and was not in line with the applicable procedural and substantive provisions, including, among other deficiencies, that the jury was not legally constituted, that not all the elements were taken into consideration for the evaluation, that he was asked questions about his personal life, his relationship with the Catholic Church, and his relationships with bishops.

12. The petitioner indicated that in opposition to the decision not to ratify him, on April 28, 2004, he filed an *amparo* action before the Second Mixed Court of Puno, which became Case No. 2004-0191. The petitioner alleged that on January 12, 2005, the National Judicial Council sought the recusal of the Second Mixed Court of Puno through an action filed with the Specialized Civil Court of Lima. That action had set in motion a jurisdictional conflict; then, on May 4, 2005, the Second Mixed Court of Puno forwarded the entire matter to the Civil Court of Lima for it to assume jurisdiction. The proceeding culminated on November 7, 2007, with the decision of the 34<sup>th</sup> Specialized Civil Court of Lima, which declared the petitioner’s *amparo* action to be unfounded.

### IV. FRIENDLY SETTLEMENT

13. On October 26, 2016, the State of Peru, represented by Luis Alberto Huerta Guerrero, Specialized Supranational Public Counsel [*Procurador Público Especializado Supranacional*], and Tito Guido Gallegos Gallegos, in his capacity as petitioner and alleged victim in this case, signed a friendly settlement agreement the text of which is as follows:

#### **FRIENDLY SETTLEMENT AGREEMENT**

This document certifies the Friendly Settlement Agreement in relation to Petition P-1339-07, before the Inter-American Commission on Human Rights (hereinafter IACHR), entered into by:

The Peruvian State:

Duly represented by Luis Alberto Huerta Guerrero, Specialized Supranational Public Counsel [*Procurador Público Especializado Supranacional*], designated by Supreme Resolution No. 143-2012-JUS, and authorized to sign this agreement by Supreme Resolution No. 193-2016-JUS, published on October 21, 2016 in the official gazette El Peruano.

And,

The petitioner before the Inter-American Commission on Human Rights:

Tito Guido Gallegos Gallegos (P-1339-07), identified by National Identity Document No. [...] and with legal domicile in [...], Puno, who personally signs this agreement of his own right, and who hereinafter shall be identified as the petitioner.

#### **FIRST CLAUSE: RECOGNITION OF RESPONSIBILITY BY THE PERUVIAN STATE**

The State recognizes that the process of ratification of judges and prosecutors, as carried out before the entry into force on December 1, 2004, of the Code of Constitutional Procedure (Law No. 28237), while in keeping with the interpretation of the applicable provisions made by the relevant mechanisms, did not incorporate certain guarantees of Effective Procedural Protection, particularly the requirement of a reasoned resolution, which must be observed in any type of procedure, in light of what is stated in the Constitution of Peru, the human rights treaties binding on the Peruvian State, the binding case-law in this regard from the Inter-American Court of Human Rights, as well as the Constitutional Court.

## **SECOND CLAUSE: EFFECTS OF THE RECOGNITION OF RESPONSIBILITY**

In keeping with what is stated in the First Clause of this Agreement, both parties consider that it is in keeping with the law, pursuant to the international human rights provisions that are binding on the Peruvian State, and in keeping with what is established in the Constitution of Peru, that the National Judicial Council set aside the resolutions that declared the non-ratification of the judge appearing in this friendly settlement. Accordingly, the judge recovers his condition as such for the following purposes:

### **2.1 Rehabilitation of titles by the National Judicial Council**

The National Judicial Council will rehabilitate the corresponding title within 15 working days of the approval, by the Inter-American Commission on Human Rights, of this friendly settlement agreement.

### **2.2 Reinstatement in the Judicial Branch**

The Judicial Branch shall order the reinstatement of the judge who signs this Agreement to his original position within 15 (fifteen) days following the rehabilitation of the title. If his original position is not available, at the request of the judge he shall be reinstated in a vacant position of the same level in the same or another judicial district.

In this case, said judge shall have the first option to return to his original position as soon as the respective vacancy occurs.

The reinstatement shall be carried out so long as there is no legal impediment whatsoever, verification of which shall be entrusted to the Judicial Branch.

### **2.3 Other rights of the reinstated Judge**

#### **2.3.1. Recognition of time of service**

The Peruvian State, through the Judicial Branch, undertakes to recognize the time of service not worked counted from the date of the Resolution of non-ratification, for the purposes of calculating his time of service and retirement under Peruvian law. If it is necessary, for carrying out this Friendly Settlement Agreement, that the judge be transferred to another judicial district, the seniority of services rendered shall be recognized, for all purposes, in the new district.

### **2.3.2. Social security contributions**

The social security contribution, under domestic law (Decree Law No. 19990, Decree Law No. 20530 and Law 25897), is to be made by the worker, thus in the instant case it should be the petitioner who signs this agreement who assumes the payment of the social security contributions for the years of service rendered.

### **2.4. New process of evaluation and ratification**

Once the judge included in this agreement has been reinstated by the Judicial Branch, the National Judicial Council shall proceed to undertake a new comprehensive evaluation and ratification. This new procedure will be carried out in keeping with the due process guarantees provided for in constitutional provisions and principles (Articles 139 and 154 of the Constitution of Peru), the American Convention on Human Rights, and the binding case-law handed down by the Inter-American Court of Human Rights and the Constitutional Court.

For those purposes, the National Judicial Council has adapted its Rules of Procedure to the corresponding normative provisions that guarantee due process in keeping with the national and international provisions and the constitutional principles.

## **THIRD CLAUSE: LEGAL BASIS**

This Agreement is signed in keeping with Articles 2 (fundamental rights of the persons), 44 (essential duties of the State), 55 (legal effect of treaties), 205 (supranational jurisdiction), and the Fourth Final and Transitory Provision (interpretation of fundamental rights) of the Constitution of Peru; Article 1 (obligation to respect rights), 2 (obligation to adopt provisions of domestic law), 8 (judicial guarantees), and 48(1)(f) (friendly settlement) of the American Convention on Human Rights, and Article 40 of the Rules of Procedure of the Inter-American Commission on Human Rights.

#### **FOURTH CLAUSE: INTERPRETATION**

The meaning and scope of this Agreement shall be interpreted in keeping with Articles 29 and 30 of the American Convention on Human Rights, as relevant, and the principle of good faith. In case of doubt or disagreement between the parties concerning the content of this Agreement, the Inter-American Commission on Human Rights shall decide on its interpretation. It is also to verify its implementation, and the parties are under an obligation to report on its status and implementation.

#### **FIFTH CLAUSE: 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 to request such approval as soon as possible, and, once obtained, to so inform the National Judicial Council so that it may proceed with the rehabilitation of the titles of appointment as per the second clause.

#### **SIXTH CLAUSE: ACCEPTANCE**

The parties involved in the signing of this Friendly Settlement Agreement express their free and voluntary conformity with and acceptance of the content of each and every one of its clauses, expressly stating that it puts an end to the dispute and any claim against the Peruvian State, domestically and/or internationally, related to the facts that the State recognizes. This declaration of finalization includes any claim for compensation or liability against the Peruvian State; with the signing of this Friendly Settlement Agreement, all such claims are considered fully satisfied.

Lima, October 26, 2016

#### **V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE**

14. The IACHR reiterates that according to Articles 48(1) (f) and 49 of the American Convention, this procedure has as its purpose “reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention.” The agreement to carry out this process expresses the good faith of the State to carry out the purposes and objectives of the Convention by virtue of the principle of *pacta*



*sunt servanda*, by which states must carry out their treaty obligations in good faith.<sup>2</sup> It also wishes to reiterate that the friendly settlement procedure contemplated in the Convention makes it possible to terminate the individual cases non-contentiously, and has proven, in cases relating to various countries, to offer an important vehicle for settlement that can be used by both parties.

15. The Inter-American Commission has closely followed the development of the friendly settlement reached in the instant case and highly values the efforts made by both parties during the negotiation of the agreement to reach this friendly settlement, which is compatible with the object and purpose of the Convention.

16. The IACHR observes that according to what is established in the friendly settlement agreement, the parties have jointly asked the Commission to adopt the report provided for in Article 49 of the American Convention, in order to initiate the procedures with respect to rehabilitation of his title and reinstatement by the State of Mr. Tito Guido Gallegos Gallegos to the judiciary.

17. The IACHR values the recognition of international responsibility on the part of the Peruvian State as part of the friendly settlement agreement, for the violation of the guarantees of effective judicial protection, in light of the domestic and regional provisions and the case-law of the Inter-American system of human rights. In addition, the IACHR takes note of the commitments assumed by the Peruvian State to make integral reparation to Tito Guido Gallegos Gallegos through the measure of restoring him to the situation prior to the occurrence of the facts alleged as violative of his rights, this is, rehabilitating his title and reinstating him to the judiciary; in addition, the IACHR takes note of the measure of satisfaction related to the recognition of the time of service not worked, from the date of the decision not to ratify the beneficiary of the agreement, for the purposes of time of service and retirement.

18. In view of the foregoing, and with special consideration for the joint request of the parties to approve the friendly settlement agreement, the IACHR decides to monitor all of the commitments assumed in the agreement after the approval of this report and until they are fully implemented.

## **VI. CONCLUSIONS**

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

#### **DECIDES:**

1. To approve the terms of the agreement signed by the parties on October 26, 2016.
2. To declare that the second clause of the friendly settlement agreement signed by the parties is still pending implementation.
3. To continue to supervise all the commitments pending implementation by the Peruvian State. To that end, to remind the parties of their commitment to report periodically to the IACHR regarding their implementation.

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<sup>2</sup> Vienna Convention on the Law of Treaties, U.N. Doc A/CONF.39/27 (1969), Article 26: **Pacta sunt servanda**. *Every treaty in force is binding upon the parties to it and must be performed by them in good faith.*

4. To make this report public and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Panamá, Panamá, on the 30<sup>th</sup> day of the month of november, 2016.  
(Signed): James L. Cavallaro, President; Margarette May Macaulay, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, Esmeralda E. Arosemena Bernal de Troitiño and Enrique Gil Botero, Commissioners.