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**REPORT No. 69/16**

**PETITION 288-08**

REPORT ON FRIENDLY SETTLEMENT

JESUS SALVADOR FERREYRA GONZALEZ

PERU

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

**I. SUMMARY**

1. On March 18, 2008, the Inter-American Commission on Human Rights (hereinafter, “the Commission” or “IACHR”) received a petition lodged by Jesus Salvador Ferreyra González (hereinafter, “the petitioner”) alleging the international responsibility of the Republic of Peru (hereinafter, “the State” or “the Peruvian State”) for alleged violations of the rights enshrined in Articles 8 (right to a fair trial) and 25 (judicial protection) of the American Convention on Human Rights, in conjunction with Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof. The petitioner claimed that after more than 22 years of service in the judiciary he was subjected to a process of evaluation and ratification in which his rights were violated and whereby it was arbitrarily and groundlessly decided not to ratify him in his position as Judge of the Superior Court of Justice of Ica, with the result that he was irrevocably dismissed from that position.

2. In 2012, with the assistance of the IACHR, the parties began friendly settlement proceedings. The parties signed a friendly settlement agreement on October 31, 2016, in which they requested that the Commission ratified said agreement.

3. This friendly settlement report, pursuant to the terms of Article 49 of the Convention and Article 40.5 of the Commission’s Rules of Procedure, provides an overview of the facts alleged by the petitioner and a transcription of the friendly settlement agreement signed by the petitioner and the representative of the Peruvian State on October 31, 2016. It also approves the agreement signed by the parties and agrees on the publication of this report in the IACHR’s Annual Report to the General Assembly of the Organization of American States.

**II. PROCEEDINGS BEFORE THE COMMISSION**

4. On March 18, 2008, the IACHR received the petition which was forwarded to the State on May 30, 2012.

5. On March 11, 2013, the petitioner submitted additional information, which was conveyed to the State.

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<sup>1</sup> Commissioner Francisco José Eguiguren Praeli, a Peruvian national, did not participate in the discussion and decision of this case in compliance with Article 17.2.a of the IACHR’s Rules of Procedure.

6. On December 11, 2012, August 26, 2013, and November 1, 2016, the State presented additional information, which was duly forwarded to the petitioner.

7. On November 1, 2016, the State reported that a friendly settlement agreement had been signed with the petitioner, and that information was forwarded to the petitioner for information purposes. On November 10, 2016, the petitioner confirmed the information regarding the signing of the friendly settlement agreement and requested that the IACHR ratified it.

### III. ALLEGED FACTS

8. The petitioner claimed that he began his professional career in the judiciary on February 2, 1990, when he was appointed to serve as Judge of the Nazca Labor Court. Subsequently, on February 15, 1996, he was appointed Judge of the Superior Court of Justice of Ica, a position of which he took possession on February 22, 1996, and where he remained until August 28, 2002, the date of his arbitrary removal.

9. The petitioner claimed that he was dismissed from the judiciary by a process of evaluation and ratification conducted by the National Council of the Magistrature [*Consejo Nacional de la Magistratura*]. He contended that during that process his rights were violated because he was not informed of the reasons for which the decision not to ratify him in his position was adopted; he was summoned to the evaluation process outside the legally established deadlines; and he was subjected to the evaluation and ratification process on two occasions.

10. The petitioner stated that he filed for *amparo* relief on November 26, 2002, which was resolved at the final instance by the Constitutional Court after a period of five years in a judgment dated November 15, 2007, whereby the filing was ruled inadmissible.

### IV. FRIENDLY SETTLEMENT

11. On October 31, 2016, the State of Peru, represented by Luis Alberto Huerta Guerrero, the Specialized Public Prosecutor for Supranational Affairs [*Procurador Público Especializado Supranacional*], and Jesus Salvador Ferreyra González, in his capacity as the petitioner and alleged victim in this case, signed a friendly settlement agreement containing the following provisions:

#### FRIENDLY SETTLEMENT AGREEMENT

Know by these presents the Friendly Settlement Agreement in connection with petition P-288-08 before the Inter-American Commission on Human Rights (hereinafter, "the IACHR"), entered into by and between:

The Peruvian State:

Duly represented by Luis Alberto Huerta Guerrero, Specialized Public Prosecutor for Supranational Affairs [*Procurador Público Especializado Supranacional*], appointed by means of Supreme Resolution No. 143-2012-JUS, and authorized to enter into this agreement by means of Supreme Resolution No. 193-2016-JUS, published on October 21, 2016, in the official journal *El Peruano*;

And,

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

Jesus Salvador Ferreyra González (P-288-08), identified by National Identity Document No. [...] and legally residing at [...], who personally signs this agreement in his own right and who is hereinafter referred to as “the petitioner.”

#### **CLAUSE ONE: ACKNOWLEDGMENT OF RESPONSIBILITY BY THE PERUVIAN STATE**

The State acknowledges that the process of ratifying judges and prosecutors, as it was carried out prior to the entry into force of the Constitutional Procedural Code (Law No. 28237) on December 1, 2004, while it was in keeping with the interpretation of the applicable provisions made by the competent agencies, did not include certain guarantees of effective procedural protection, particularly the requirement of grounded resolutions that must be observed in proceedings of all kinds. This is in accordance with the terms of the Constitution of Peru, the human rights treaties by which the Peruvian State is bound, and the binding jurisprudence in this matter from the Inter-American Court of Human Rights and the Constitutional Court.

#### **CLAUSE TWO: EFFECTS OF THE ACKNOWLEDGMENT OF RESPONSIBILITY**

In accordance with the terms of Clause One of this agreement, both parties believe that it is in keeping with law that, pursuant to the international human rights provisions binding on the Peruvian State and to the terms of the Constitution of Peru, the National Council of the Magistrature shall render without effect the resolutions whereby the judge covered by this friendly settlement was not ratified. Consequently, the judge shall recover his status as such for the following effects:

##### **2.1 Restoration of titles by the National Council of the Magistrature**

The National Council of the Magistrature shall reinstate the corresponding title within fifteen working days following the ratification of this friendly settlement agreement by the Inter-American Commission on Human Rights.

## **2.2 Reincorporation into the judiciary**

The judiciary shall arrange for the reincorporation of the judge signing this agreement into his original position within fifteen (15) days following the restoration of his title. If the original position is not available, at the judge's request, he shall be reincorporated into a vacant position of the same level in the same judicial district or in another district.

In that case, the judge shall have the right of first refusal to return to his original position as soon as it falls vacant.

His reincorporation shall take place provided there are no legal impediments, the verification of which shall be carried out by the judiciary.

## **2.3 Other rights of the reincorporated judge**

### **2.3.1. Recognition of years of service**

The Peruvian State, through the judiciary, shall recognize the judge's years of service not worked—as of the date of the decision not to ratify him in his position—for the purposes of calculating seniority and retirement benefits in accordance with Peruvian law. Should compliance with this friendly settlement agreement require the judge to be transferred to another judicial district, his years of service shall be recognized for all effects at the new posting.

### **2.3.2. Welfare contributions**

Welfare contributions, according to domestic regulations (Decree Law No. 19990, Decree Law No. 20530, and Law 25897), are the responsibility of the worker; therefore, in the case at hand, the petitioner signing this agreement shall assume the payment of his welfare contributions for the recognized years of service.

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

Once the judge covered by this agreement has been reincorporated into the judiciary, the National Council of the Magistrature shall proceed to carry out a new comprehensive process of evaluation and ratification. This new process shall be carried out in accordance with the guarantees of due process enshrined in the provisions and principles of the Peruvian Constitution (Articles 139 and 154), the American Convention on Human Rights, and the binding jurisprudence of the Inter-American Court of Human Rights and the Constitutional Court.

For that purpose, the National Council of the Magistrature has adapted its Regulations to the corresponding regulatory provisions that guarantee due process, in accordance with national and international standards and the principles of the Constitution.

### **CLAUSE THREE: LEGAL BASIS**

This Agreement is signed in accordance with the terms of Articles 2 (basic rights of people), 44 (essential duties of the State), 55 (validity of treaties), and 205 (supranational jurisdiction) of the Peruvian Constitution, together with the Fourth Transitory and Final Provision (interpretation of fundamental rights) thereof; 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 40 of the Rules of Procedure of the Inter-American Commission on Human Rights.

### **CLAUSE FOUR: INTERPRETATION**

The content and scope of this agreement shall be interpreted in light of Articles 29 and 30 of the American Convention on Human Rights, as applicable, and in accordance with the principle of good faith. Should there be any doubt or disagreement between the parties regarding the content of this agreement, it shall fall to the Inter-American Commission on Human Rights to decide on its interpretation. The Commission shall also be responsible for overseeing its implementation, and the parties shall be obliged to report on its status and compliance.

### **CLAUSE FIVE: RATIFICATION BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (IACHR)**



This friendly settlement agreement is subject to ratification by the Inter-American Commission on Human Rights. The Peruvian State shall request said ratification as promptly as possible and, once it is obtained, inform the National Council of the Magistrature (CNM) thereof for it to proceed with the restoration of the titles of appointment pursuant to Clause Two.

#### **CLAUSE SIX: ACCEPTANCE**

The parties signing this friendly settlement agreement express their free and voluntary agreement with and acceptance of the contents of each and all of its clauses and they attest that it concludes the dispute and all claims against the Peruvian State at national and/or international venues in connection with the facts acknowledged by the State. This declaration of conclusion covers any and all claims for indemnification or responsibility against the Peruvian State which, with the signing of this friendly settlement agreement, have been satisfied in full.

Lima, October 31, 2016

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

12. The IACHR again notes that pursuant to Articles 48.1.f and 49 of the American Convention, the purpose of this procedure is to reach “a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention.” Accepting this procedure demonstrates the State’s good faith in pursuit of the Convention’s purposes and goals under the principle of *pacta sunt servanda*, whereby states are required to comply in good faith with the treaty obligations they assume.<sup>2</sup> It also notes that the friendly settlement procedure provided for in the Convention allows individual cases to be concluded in a non-contentious fashion and that in cases from several different countries, it has served as an important vehicle for resolving disputes that is available to either party.

13. The Inter-American Commission has closely followed the development of the friendly settlement reached in this case, and it applauds the efforts made by both parties during the negotiations to reach this friendly settlement, which is compatible with the purposes and goals of the Convention.

14. The IACHR notes that pursuant to the terms of the friendly settlement agreement, the parties have jointly requested that the Commission adopts the report referred to in Article 49 of the American Convention, in order to begin the formalities related to the restoration of Mr. Jesus Salvador Ferreyra González’s title and his reincorporation into the judiciary by the State.

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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.”

15. The IACHR applauds the Peruvian State's recognition of its international responsibility for violating the guarantees of effective judicial protection as contained in the friendly settlement agreement in accordance with the national and regional standards and the jurisprudence of the Inter-American human rights system. In addition, the IACHR takes note of the commitments assumed by the Peruvian State to provide Mr. Jesus Salvador Ferreyra González with comprehensive amends through the restoration of his position as it was prior to the events whereby his rights were allegedly violated, that is, by restoring his title and reinstating him in the personnel of the judiciary. In addition, the IACHR takes note of the measure of satisfaction consisting of the recognition of years of service not worked—from the date of the decision not to ratify the position held by the agreement's beneficiary—for the purposes of calculating seniority and retirement benefits.

16. In light of the foregoing, and taking into particular consideration the parties' joint request regarding the approval of the friendly settlement agreement, the IACHR resolves, following the adoption of this report, to monitor all the commitments assumed in the agreement 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 31, 2016.
2. To declare that compliance with Clause Two of the friendly settlement agreement signed by the parties remains pending.
3. To continue to monitor all the State's commitments that are still pending compliance. To that end, to remind the parties of their commitment to report to the IACHR on a regular basis regarding the implementation thereof.
4. To publish this report and to include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Panamá, on the 30 days of the month of November, 2016. (Signed): James L. Cavallaro, President; Margarete May Macaulay, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, Esmeralda E. Arosema Bernal de Troitiño and Enrique Gil Botero, Commissioners.