

TECHNICAL INFORMATION SHEET
PETITION N° 288/08 JESÚS SALVADOR FERREYRA
FRIENDLY SETTLEMENT REPORT N° 69/16
TOTAL COMPLIANCE
(PERU)

I. SUMMARY OF THE CASE

Victim (s): Jesús Salvador Ferreyra

Petitioner (s): Jesús Salvador Ferreyra González

State: Peru

Report on Friendly Settlement Agreement: 69/16, published on November 30, 2016

Related Rappporteurship: N/A

Topics: Justice operators/ Non-confirmed judges/ Due Process/Guarantees of judicial protection

Facts: 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 alleged arbitrary removal. The petitioner claimed that he was dismissed from the judiciary by a process of evaluation and ratification conducted by the National Council of the Judiciary [*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 that he was not to be confirmed in his position was adopted; he was required to go through the evaluation process outside the legally established terms; and he was subjected to the evaluation and confirmation process on two occasions. The petitioner stated that he filed for a petition for constitutional protection [*Writ of Amparo*] 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.

Rights Declared Admissible: The petitioner alleged the international responsibility of the State of Peru for alleged violations of the rights enshrined in Articles 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention on Human Rights, in conjunction with Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) of said treaty. The petitioner claimed that after more than 22 years of service in the judiciary he was subjected to a process of evaluation and confirmation in which his rights were violated and whereby in an arbitrary and groundless decision, he was not confirmed in his position as Judge of the Superior Court of Justice of Ica, with the result that he was irrevocably dismissed from that position.

II. PROCEDURAL ACTIVITY

1. On October 31, 2016, the parties signed a friendly settlement agreement.
2. On November 30, 2016, the Commission approved the friendly settlement agreement, in Report No. 69/16.

III. ANALYSIS OF COMPLIANCE WITH THE CLAUSES OF THE FRIENDLY SETTLEMENT AGREEMENT

Agreement Clause	Status of Compliance
<p>Clause One. – Acknowledgement of Responsibility. The State acknowledges that the process of confirming 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, 2005, 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.</p>	Declarative Clause
<p>Clause Two. - Effects of the Acknowledgement 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 Judiciary shall render without effect the resolutions whereby the judge covered by this friendly settlement was not confirmed. Consequently, the judge shall recover his status as such for the following effects:</p>	Declarative Clause
<p><u>2.1 Restoration of titles by the National Council of the Judiciary.</u> The National Council of the Judiciary 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.</p>	Total¹
<p><u>2.2 Reincorporation into the judiciary.</u> The judiciary branch shall arrange for the reincorporation of the judge who is 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 becomes vacant. His reincorporation shall take place provided there are no legal impediments, the verification of which shall be carried out by the judiciary branch.</p>	Total²
<p><u>2.3. Other rights of the reincorporated judge.</u> 2.3.1 Recognition of years of service. The Peruvian State, through the judiciary branch, shall recognize the judge’s years of service not worked—as of the date of the decision that did not to confirm 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.</p>	Total³

¹ IACHR, Report No. 69/16, Petition 288-08. Friendly Settlement. Jesús Salvador Ferreyra González. Peru. November 30, 2016.

² IACHR, Report No. 69/16, Petition 288-08. Friendly Settlement. Jesús Salvador Ferreyra González. Peru. November 30, 2016.

³ IACHR, Report No. 69/16, Petition 288-08. Friendly Settlement. Jesús Salvador Ferreyra González. Peru. November 30, 2016.

<p>2.3.2. Social Security contributions Social Security 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 be responsible for his contributions for the recognized years of service.</p>	<p>Total⁴</p>
<p>2.4. New evaluation and confirmation process Once the judge mention in this agreement has been reincorporated into the judiciary branch, the National Council of the Judiciary shall proceed to carry out a new comprehensive process of evaluation and confirmation. 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 Judiciary 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.</p>	<p>Total⁵</p>

IV. LEVEL OF COMPLIANCE OF THE CASE

3. The Commission declared total compliance with the case and ceased monitoring the friendly settlement agreement in its Annual Report 2018.

V. INDIVIDUAL AND STRUCTURAL OUTCOMES OF THE CASE

A. Individual outcomes of the case

- The State restored the title of the Judge;
- The State reinstated the Judge in his position;
- The State acknowledged the period of services not worked;
- The State submitted the judge to a new procedure in which he was confirmed.

⁴ IACHR, Report No. 69/16, Petition 288-08. Friendly Settlement. Jesús Salvador Ferreyra González. Peru. November 30, 2016.

⁵ See IACHR, Annual Report 2018, Chapter II, Section G: Status of Compliance with the Recommendations Issued by the IACHR in Merits Reports and Friendly Settlement Agreements Approved by the IACHR, Follow-up sheets.