

Acevedo Buendía et al. v. Peru

ABSTRACT¹

This case regards the right to judicial protection and the right to property of 273 retired state employees, as well as the State's duty to progressively develop economic, social, and cultural rights. Their pensions had been reduced by governmental decree during Alberto Fujimori's rule, in contradiction with previous State laws. The Court eventually found that the State had violated the pensioners' rights to property and judicial protection, but could not find a violation of the duty to progressively develop economic, social, and cultural rights.

I. FACTS

A. Chronology of Events

February 26, 1974: Peru establishes Decree Law No. 20.530, which regulates pensions for civil servant retirees.² The law stipulates a retirement pension that is progressively fixed to the salary of the active public employee performing the same or a similar function to the one he or she performed at the time of his or her retirement.³ The Comptroller General of the Republic ("CGR") assumes responsibility for pension payments.⁴

1979: The State incorporates a system to adjust the pensions of the State's civil servants under the Eighth General and Transitory Provision of the 1979 Political Constitution of Peru.⁵ Decree Law No 20.530 continues to regulate civil servant pensions.⁶

July 7, 1992: The State establishes Decree Law No. 25.597, commis-

1. Nathaniel Reinhardt, Author; Jennifer Toghian, Editor; Hayley Garscia, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Acevedo Buendía et al. v. Peru, Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 198, ¶ 43 (July 1, 2009).

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

sioning the Ministry of Economy and Finance (“MEF”) to assume responsibility, originally held by the CGR, for the payment of “salaries, pensions, and similar expenses.”⁷ Additionally, the law eliminates the right of CGR employees to receive the “adjusted and renewed pension” they enjoyed under Decree Law No. 20.530.⁸ The law affects 273 members of the Association of Discharged or Retired Employees (“Association”) of the CGR, whom originally opted for the pension system under Decree Law No. 20.530.⁹

March 17, 1993: The State enacts Supreme Decree No. 036-93-EF.¹⁰ This substitutes the Annual Bonus for Occupational Training (“ABOT”) that members of the Association receive with a bonus for the pensioners’ level of education, which is much lower than what they previously received.¹¹ As such, 273 members of the Association stopped receiving pension amounts that correspond to this adjustment.¹²

April 1993 – October 2002: Association members receive a non-adjustable pension amount that is significantly lower than the pension amount the members originally opted for.¹³

May 27, 1993: Members of the Association file an action for *amparo* against CGR and MEF with the Sixth Civil Court of Lima, declaring Decree Law No. 25.597 and Supreme Decree No. 036-93-EF non-applicable.¹⁴

July 9, 1993: The Sixth Civil Court of Lima rules against the Association because the petitioners did not contest Decree Law No. 25.597 at the appropriate time.¹⁵ The Association did not file an action for *amparo*, following damages, within sixty days of July 7, 1992, when the state established Decree Law No. 25.597.¹⁶

December 14, 1993: On appeal, the First Specialized Civil Chamber of the Superior Court of Lima reverses and declares the complaint admis-

7. *Id.*

8. *Id.*

9. *Id.* ¶¶ 2, 43

10. *Id.* ¶ 43

11. *Id.* ¶ 43

12. *Id.*

13. *Id.* ¶ 53.

14. *Id.* ¶ 44.

15. *Id.*

16. *Id.*

sible.¹⁷

October 3, 1994: On appeal by annulment, the Constitutional and Social Law Chamber of the Supreme Court of Justice of the Republic declares the previous decision null and void.¹⁸ The complaint is inadmissible because it is outside the legal time limit to contest Decree Law No. 25.597.¹⁹ Further, although contesting Supreme Decree No. 036-93-EF is within the time limit, the denial is not “incompatible” with the State’s Constitution.²⁰

October 21, 1997: On an appeal after the execution of judgment, the Constitutional Court reverses the previous ruling.²¹ The court establishes the right to an adjustable pension for civil employees, ruling in favor of members of the Association.²²

January 5, 1999: CGR continues to negotiate with MEF regarding the resources with which to make the payment.²³

February 12, 1999: Considering the action for *amparo* inappropriate and ineffective, the Transitional Corporative Public Law Chamber of the Superior Court of Justice of Lima (“TCP”) declares the original October 21, 1997 judgment null and void.²⁴

January 26, 2001: The Constitutional Court declares the previous ruling of the TCP non-enforceable ordering the case to comply with the Constitutional Court’s judgment on October 21, 1997.²⁵

March 29, 2001: CGR approves authorization of Association members’ adjusted pensions starting November 2002.²⁶

B. Other Relevant Facts

[None]

17. *Id.*

18. *Id.* ¶ 45.

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.* ¶ 46.

24. *Id.* ¶ 46.

25. *Id.* ¶ 48.

26. *Id.* ¶ 49.

II. PROCEDURAL HISTORY

A. Before the Commission

November 12, 1998: Members of the Association forward petition No. 12.357 to the Secretariat of the Commission.²⁷

January 24, 2000: The Association expands the petition by appointing, *inter alia*, the Labor Advisory Center (“CEDAL”) as legal representative.²⁸

October 27, 2006: Commission adopts the Report on Merits No. 125/06 concluding that the State violated Articles 25 (Right to Judicial Protection) and 21 (Right to Property) of the American Convention.²⁹ The report recommends that the State comply with the October 21, 1997 and January 26, 2001 judgments.³⁰

B. Before the Court

April 1, 2008: The Commission submits the case to the Court after the State fails to adopt its recommendations.³¹

June 6, 2008: The State appoints Mr. Víctor Oscar Shiyín García Toma as *ad hoc* judge.³²

December 5, 2008: The President of the Court convenes all parties to a public hearing in order to listen to statements of two witnesses for the representatives, as well as the final arguments on the preliminary objection and merits, reparations and costs.³³

January 6, 2009: The Commission files a statement for informative purposes rendered by Mr. Javier Cabanillas Reyes.³⁴ Additionally, the Commission files the expert report rendered by Ms. Flavia Marco Na-

27. *Id.* ¶ 1.

28. *Id.*

29. *Id.* ¶ 1 n.4.

30. *Id.*

31. *Id.* ¶ 1.

32. *Id.* ¶ 6.

33. *Id.*

34. *Id.*

varro.³⁵ Ms. Marco Navarro is an attorney and expert in social security systems.³⁶

January 16, 2009: The State presents observations to the statement for informative purposes rendered by Mr. Cabanillas Reyes and to the expert report rendered by Ms. Marco Navarro.³⁷

January 21, 2009: A public hearing takes place.³⁸

February 23, 2009: The Commission, the State and the representatives of the alleged victims submit their final written arguments on the preliminary objection, merits, reparations and costs.³⁹

The State argues that the Court lacks the competence *ratione materiae* to hear the case.⁴⁰ The State asserts that the Court should only analyze potential violations stemming from the right to judicial protection and the right to property.⁴¹ The State contends that the right to social security is not enshrined in the Convention.⁴²

The Court rejects the State's preliminary objection that the Court lacks the competence *ratione materiae*.⁴³ The Court reasons that it may determine its own jurisdiction and that the broad wording of the Convention stipulates that the Court has full jurisdiction over all matters concerning its Articles and provisions.⁴⁴ Finally, the Court concludes that since the State is a party to the American Convention, acknowledging the Court's jurisdiction, the Court is competent to decide whether the State failed to comply with or violated any of the rights protected by the Convention.⁴⁵

March 20 2009: The Court requests the representatives to submit receipts and evidence related to the costs and expenses mentioned in appendix 5 of the brief of pleadings and motions.⁴⁶

June 17, 2009: The representatives indicate that they sent a "list of ex-

35. *Id.*

36. *Id.* ¶ 23(g).

37. *Id.* ¶ 8.

38. *Id.* ¶ 9.

39. *Id.* ¶ 10.

40. *Id.* ¶ 12.

41. *Id.*

42. *Id.*

43. *Id.* ¶ 19.

44. *Id.* ¶ 16.

45. *Id.* ¶ 17.

46. *Id.* ¶ 11.

penses” by mail.⁴⁷

June 22 – 23, 2009: The representatives present the list of requested expenses by electronic mail.⁴⁸

June 30, 2009: The State forwards respective observations regarding the representatives’ submitted list of expenses to the Court.⁴⁹

1. Violations Alleged by Commission⁵⁰

Article 21 (Right to Property)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation to Respect Rights)

Article 63(1) (Obligation to Repair) of the American Convention.

2. Violations Alleged by Representatives of the Victims⁵¹

Same Violations Alleged by Commission, plus:

Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights) of the American Convention.

III.MERITS

A. Composition of the Court⁵²

Cecilia Medina Quiroga, President

Sergio García Ramírez, Judge

Manuel E. Ventura Robles, Judge

Leonardo A. Franco, Judge

Margarette May Macaulay, Judge

Rhadys Abreu Blondet, Judge

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.* ¶ 3.

51. *Id.* ¶ 4 Mr. Javier Mujica Petit and Ms. Isabel Acevedo León serve as representatives of the 273 members of the Association. *Id.*

52. Judge Diego García-Sayán, a Peruvian national, did not participate in the decision because he received information in 2001, in his capacity as incumbent Minister of Justice, about the activities that the Association had been carrying out before the Commission, and felt it prudent to disqualify himself. *Id.* at n.2.

Víctor Oscar Shiyín García Toma, Judge *Ad Hoc*

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. Decision on the Merits

July 1, 2009: The Court issues its Judgment on Preliminary Objection, Merits, Reparations and Costs.⁵³

The Court found unanimously that Peru had violated:

Articles 25(1) (Right of Recourse Before a Competent Court) and 25(2)(c) (Remedies Must Be Enforced), in relation to Article 1(1) of the American Convention, to the detriment of the 273 members of the Association,⁵⁴ because:

*The Court found that the State failed to ensure adequate remedies regarding judgments rendered by the State's domestic courts and failed to "guarantee effective mechanisms" to enforce such domestic judgments.*⁵⁵

*First, the Court excluded the issue of whether the victims had a right to an adjustable pension or whether the State violated such rights.*⁵⁶ *The Constitutional Court of Peru upheld the right to an adjustable pension enshrined in the Peruvian Constitution and the State repeatedly violated the alleged victims' rights via the October 21, 1997 and January 26, 2001 judgments.*⁵⁷ *There was no dispute that two hundred and seventy-three victims opted for Decree Law 20.530, which stipulated a retirement plan progressively attached to the salary of a CGR employee performing a similar function at the time the alleged victims retired.*⁵⁸ *As such, the Court reasoned that it was not their purpose to analyze "whether the alleged victims had the right to receive an adjustable pension or whether the State violated such right[s]," since the Constitutional Court of Peru already decided these issues in favor of the victims.*⁵⁹

53. Acevedo Buendía et al v. Peru, Preliminary Objection, Merits, Reparations and Costs.

54. *Id.* ¶¶ 66-79.

55. *Id.* ¶ 72.

56. *Id.* ¶ 52.

57. *Id.* ¶¶ 45, 48.

58. *Id.* ¶ 43.

59. *Id.* ¶ 52.

Further, there was no dispute that the alleged victims received a non-adjustable pension amount that was marginally lower than the adjusted amount under Decree Law 20.530 between the period of April 1993 and October 2002.⁶⁰ While these facts were not in dispute, the State argued that the two previous judgments did not judicially order the State to pay the amounts owed between April 1993 and October 2002 to the alleged victims.⁶¹

Consequently, the Court barred the State's argument by the principle of estoppel.⁶² The Court stated that once a State has assumed a position producing certain legal effects, it may not later contradict that position and change the state of affairs upon which the other party relied.⁶³ Here, the State made previous positions of acknowledgment to pay reimbursements or amounts owed during the entire domestic procedure and the procedure before the Commission.⁶⁴ The domestic documents included: Bill No. 2029-2007-PE which authorized a deposit for the amounts owed to the CGR explicitly referring to the "payment of amount[s] owed from April 1993 to October 2002;" Judicial Decision No. 152 which remanded the case to the Office of Judicial Expert Assessments to calculate the pensions owed between the months of April 1993 and October 2002; Note No. 7-5-M/608 which referenced an approved first payment in favor of the alleged discharged and retired CGR employees; Bill for an Emergency Decree dated January 11, 2008, which proposed authorizing a fund to be "exclusively assigned for the payment of the debt derived from the judicial rulings" for the alleged CGR victims; and Administrative Order No. 022-2001-CG/B190 dated March 29, 2001 which established that the CGR shall make the corresponding calculations of the amounts owed to the alleged CGR victims.⁶⁵ As a result, the State acknowledged certain facts as true, producing a legal effect upon which the representatives of the alleged victims and the Commission acted.⁶⁶ The Court stated that the State's ability to now take a contrary position is barred by the principle of estoppel.⁶⁷

60. *Id.* ¶ 53.

61. *Id.* ¶ 55.

62. *Id.* ¶ 57.

63. *Id.* ¶ 57.

64. *Id.* ¶ 62.

65. *Id.* ¶¶ 62(a), (b), (c), (d), (e).

66. *Id.* ¶ 63.

67. *Id.*

Next, the Court determined that the State violated the alleged victims' rights to judicial protection.⁶⁸ Article 25(1) (Right of Recourse Before a Competent Court) of the Convention established a State's duty to ensure that all persons subject to the State's jurisdiction are afforded effective recourse against acts that infringe upon their fundamental rights.⁶⁹ Additionally, Article 25(2)(c) (Remedies Must Be Enforced) established a State's duty to ensure that authorities enforce these remedies when granted.⁷⁰ In this regard, the State has the responsibility to ensure effective remedies in State legislation and guarantee effective mechanisms in executing domestic judicial decisions.⁷¹ Here, the victims filed actions for amparo which, by their nature and according to Article 25(1) (Right of Recourse Before a Competent Court) of the Convention, are simple and prompt proceedings.⁷² Yet, the Court noted that the representatives filed the first remedy for amparo four and half years ago, and filed the second remedy for amparo to comply with the first remedy, two years ago.⁷³ Thus, the two actions for amparo were not prompt.⁷⁴

Additionally, the Court found that State failed to pay the pension amounts owed from April 1993 and October 2002.⁷⁵ Although the State argued that it could not pay the requested amounts due to budgetary constraints, the Court held that budgetary woes may not be used as an excuse for the many years of delay in complying with the domestic judgments.⁷⁶ Further, the Court noted that although the State still lacked a judicially determined calculation for the amounts owed, the lack of such a determination did not exonerate the State from responsibility.⁷⁷ As such, the inefficient and ineffective remedies violated the alleged victims' rights to judicial protection.⁷⁸

68. *Id.* ¶ 79.

69. *Id.* ¶ 69.

70. *Id.* ¶ 70.

71. *Id.* ¶ 72.

72. *Id.* ¶ 74.

73. *Id.*

74. *Id.*

75. *Id.* ¶ 75.

76. *Id.*

77. *Id.* ¶ 76.

78. *Id.*

Article 21(1) (Right to Use and Enjoyment of Property) and 21(2) (Right to Compensation in Case of Expropriation), in relation to Article 1(1) of the American Convention, to the detriment of the 273 members of the Association,⁷⁹ because:

The Court found that because the State failed to comply with the Constitutional Court's judgments, the State violated the victims' rights to property.⁸⁰ Article 21 (Right to Property) protects a person's material objects that are capable of being possessed, including vested rights, or rights incorporated into the person's patrimony.⁸¹ Here, the victims acquired the right to an adjustable pension governed under the terms and conditions of Decree Law No. 20530.⁸² The State then restricted that right, between April 1993 and October 2002, by reducing the amount the victims' pensions to a non-adjustable rate.⁸³ The Constitutional Court of Peru had found the State's reduction of the alleged victims' pensions to be illegal.⁸⁴ Thus, the State's lack of compliance with the domestic judicial judgments violated the victims' rights to property over their legally recognized adjustable pension.⁸⁵

The court found unanimously that the State had not violated:

Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights), in relation to Article 1(1) and 2 of the Convention, to the detriment of the 273 members of the Association,⁸⁶ because:

The Court stated that Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights) pertains to any deliberate "retrogressive measures" that constrain the exercise of a right.⁸⁷ The Court analyzed the term "retrogressive measures" with careful consideration of the State's justifications for the measure and in relation to other rights, including Article 25 (Right to Judicial Protection) and Article 21 (Right to Property).⁸⁸

79. *Id.* ¶ 91.

80. *Id.* ¶ 90.

81. *Id.* ¶ 84.

82. *Id.* ¶ 87.

83. *Id.*

84. *Id.* ¶ 87.

85. *Id.* ¶ 88.

86. *Id.* ¶ 106.

87. *Id.* ¶ 103.

88. *See id.*

First, the representatives argued that the violations stemmed from the lack of payments between April 1993 and October 2002 and the non-compliance with the Constitutional Court of Peru's judgments.⁸⁹ The Court reasoned that these arguments are not within the same vein of Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights) because they are not centered on some measure adopted by the State that hinder the right to a pension.⁹⁰ Further, the victims' violated rights are those protected and better addressed by Article 25 (Right to Judicial Protection) and Article 21 (Right to Property).⁹¹

Second, the representatives of the alleged victims argued that the adoption and application of Decrees No. 25597 and 036-93-EF violated Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights).⁹² However, the Court dismissed this argument because there was no controversy as to whether the victims had a right to an adjustable pension or whether such right was adversely affected by such decrees.⁹³ As a result, the Court ruled that the State had not violated Article 26.⁹⁴

C. Dissenting and Concurring Opinions

1. Concurring Opinion of Judge Sergio García Ramírez

In a separate opinion, Judge García Ramírez discussed five points.⁹⁵ The first related to the procedural concept of a "tacit" waiver, which entails the inability to file a legal defense during the conduct of the proceeding.⁹⁶ Some states argued that such a waiver does not exist.⁹⁷ Judge García Ramírez did not focus on the existence of a tacit waiver, rather, he argued that the State failed to take a particular step afforded to it at the legal proceeding, and that once the opportunity passed, the State lost the possibility to do so.⁹⁸

Second, Judge García Ramírez cautioned against a policy that dis-

89. *Id.* ¶ 98.

90. *Id.* ¶ 106.

91. *Id.*

92. *Id.* ¶ 98.

93. *Id.* ¶ 107.

94. *Id.*

95. Acevedo Buendía et al. v. Peru, Preliminary Objection, Merits, Reparations and Costs, Concurring Opinion of Judge Sergio García Ramírez, Inter-Am. Ct. H.R. (ser. C) No. 198 (July 1, 2009).

96. *Id.* ¶ 2.

97. *Id.*

98. *Id.* ¶ 3.

courages states from putting forth friendly solutions, in the context of considerations and suggestions, because doing so might produce unfavorable effects on the State's legal proceedings before the Court.⁹⁹ He alluded to a delicate balance between protecting the rights enshrined in the American Convention and encouraging consensual solutions between parties.¹⁰⁰

Next, Judge García Ramírez discussed measuring reasonable time by the way the lapse of time affects the right in question.¹⁰¹ The Court considered reasonable time based on the characteristics of the matter subjected to the legal proceeding or decision.¹⁰² Then, Judge García Ramírez considered it important and relevant to determine whether a person "acquired" a certain right to better determine whether a violation has occurred.¹⁰³

Finally, Judge García Ramírez highlighted the Court's limitations in developing and interpreting Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights) because of the concept of *corpus juris* and from the characteristics of the cases heard by the Court.¹⁰⁴ Given this limitation, the Court delineated that Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights) deals not only with summary expressions that induce public policy, but also the legal methods that determine the meaning of these policies.¹⁰⁵

2. Concurring Opinion of Judge *Ad Hoc* Víctor Oscar Shiyín García Toma

In a separate opinion, Judge *Ad Hoc* García Toma stated that the part of the case that described the doctrinal concepts related to Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights) are not related to the specific case at hand, and should not be included.¹⁰⁶ He argued that the concept of Article 26 is not connected to the case at issue and may call for a more detailed and thorough discussion in the future.¹⁰⁷

99. *Id.* ¶ 6.

100. *Id.* ¶¶ 7-10.

101. *Id.* ¶ 11.

102. *Id.* ¶ 12.

103. *Id.* ¶ 13.

104. *Id.* ¶ 16.

105. *Id.* ¶ 19.

106. Acevedo Buendía et al. v. Peru, Preliminary Objection, Merits, Reparations and Costs, Concurring Opinion of Judge Víctor Oscar Shiyín García Toma, Inter-Am. Ct. H.R. (ser. C) No. 198 (July 1, 2009).

107. *Id.*

IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

A. Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)

1. Enforce Rulings of the Constitutional Court

The Court ordered the State to fully adhere to the Constitutional Court of Peru's rulings dated October 21, 1997 and January 26, 2001, with the understanding that the State reimburse the amount owed and unpaid to the victims between April 1993 and October 2002.¹⁰⁸

2. Publish the Judgment

The Court ordered the State to publish this Judgment in the Official Gazette and in another newspaper of wide national circulation.¹⁰⁹

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

The Court did not determine compensation for pecuniary damages in favor of the victims because the representatives of the victims failed to present any specific allegation or sufficient evidence to allow the Court to make a calculation for the amounts lost.¹¹⁰

2. Non-Pecuniary Damages

The Court ordered the State to pay \$2,000 to each of the 273 victims named in the Judgment for damages as their quality of life diminished when their pensions were reduced.¹¹¹

108. Acevedo Buendía et al. v. Peru, Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 198, ¶ 138 (July 1, 2009).

109. *Id.* ¶ 141.

110. *Id.* ¶ 117.

111. *Id.* ¶ 134.

3. Costs and Expenses

The Court ordered the State to pay \$20,000 to the Association of Discharged and Retired Employees for costs and expenses incurred during the processing of the instant case on the domestic level and within the Inter-American system.¹¹²

4. Total Compensation (including Costs and Expenses ordered):

\$566,000

C. Deadlines

The State must enforce the rulings of the Constitutional Court within a reasonable time.¹¹³ The State must publish the pertinent paragraphs of this Judgment within six months following notice of this Judgment.¹¹⁴ The State has one year from notification of the Judgment to comply with the costs and reparations ordered by the Court.¹¹⁵ If the beneficiaries are unable to claim the awarded amounts within one year, the State shall deposit the said amounts in an account held in the beneficiaries' name or draw a certificate of deposit.¹¹⁶ Should the State fail to compensate the victims on time, the State must pay interest on the amount owed corresponding to Peruvian banking interest payments in arrears.¹¹⁷

V. INTERPRETATION AND REVISION OF JUDGMENT

November 3, 2009: The State submitted a request for Interpretation of the Judgment on the Preliminary Objection, Merits, Reparations and Costs because the State wanted to clarify whether the reimbursement of costs and expenses should be paid to the legal person called the Association of Discharged and Retired Employees or to the persons declared as the victims in the Judgment.¹¹⁸

112. *Id.* ¶ 150.

113. *Id.* ¶ 138.

114. *Id.* ¶ 141.

115. *Id.* ¶¶ 134, 157.

116. *Id.* ¶ 153.

117. *Id.* ¶ 155.

118. Acevedo Buendía et al. v. Peru, Interpretation of the Judgment on the Preliminary Objection, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 210, ¶ 2 (Nov. 24, 2009).

*A. Composition of the Court*¹¹⁹

Cecilia Medina Quiroga, President
 Sergio García Ramírez, Judge
 Manuel E. Ventura Robles, Judge
 Margarete May Macaulay, Judge
 Rhadys Abreu Blondet, Judge

Pablo Saavedra Alessandri, Secretary
 Emilia Segares Rodríguez, Deputy Secretary

B. Merits

The Court found unanimously that the payment should be delivered directly to the Association of Discharged and Retired Employees¹²⁰

VI. COMPLIANCE AND FOLLOW-UP

May 28, 2009: The Fourth Specialized Civil Court of the Superior Court of Jesus of Lima approved a new expert report that calculated the amount owed to the victims, between April 1993 and October 2002.¹²¹ The Court approved the severance payment and ordered payment within three days in Resolution 330.¹²²

July 30, 2009: The Office of the Attorney General of the Comptroller objected to the new report and amounts owed in Resolution 330.¹²³

August 14, 2009: State submitted an appeal regarding the May 28, 2009 ruling.¹²⁴

September 28, 2009: The Sixth Civil Chamber issued a resolution in re-

119. By reason of *force majeure*, Judge Leonardo A. Franco was not able to participate in the deliberation and signing of the Judgment. *Id.* n.1. Judge *Ad Hoc* Víctor Oscar Shiyín García Toma did not participate in the deliberation and signing of the Judgment, but expressed his conformity on what was decided by the Court. *Id.* Judge Diego García-Sayán, a Peruvian national, excused himself from hearing the present case for the same reason he excused himself from hearing the case on the Preliminary Objection, Merits, Reparations and Costs. *Id.*

120. *Id.* ¶ 20.

121. Acevedo Buendía et al. v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. “Considering” ¶ 14 (July 1, 2011).

122. *Id.*

123. *Id.*

124. *Id.*

sponse to an application for *amparo* filed by the Association for Discharged and Retired Employees.¹²⁵ The Sixth Civil Chamber stated that the Office of the Comptroller was not allowed to reduce the amounts owed to the alleged victims via the Solidarity Contribution for Pension under Law No. 28046 because the Inter-American Court specifically stated that the amounts owed to the victims were not affected by any tax burden.¹²⁶

December 2-3, 2009: The Comptroller of the Republic issued payment orders to comply with the State's obligation to pay \$2,000 to each victim.¹²⁷ The corresponding payments were made by way of cashier's checks.¹²⁸ The State paid all 273 victims in full except victim Mr. Nolberto Castro Zapata, who received \$1,400 and victim Mr. Jesús Romero Pacora, who received \$1,600.¹²⁹

December 10, 2009: The Ministry of Economy and Finance responded to the Officer of the Comptroller's request for funds by stating precise instructions and suggestions to comply with payments owed to the victims.¹³⁰

February 5, 2010: The Official Gazette and the Diario Perú 21 published the pertinent parts of the Judgment.¹³¹

February 10, 2010: The Comptroller of the Republic issued payment order to the Association of Discharged and Retired Employees of the Office of the Comptroller for \$20,000.¹³²

March 3, 2010: Sixth Civil Chamber of the Superior Court of Lima ruled against Resolution 330, affirmed the May 28, 2009 ruling, and affirmed the expert report that calculated the Office of the Comptroller General's amount owed to the alleged victims.¹³³ The Court stated that the judgment "definitively and unquestionably ratifies the total amount owed" to the victims.¹³⁴

125. *Id.* "Considering" ¶ 28.

126. *Id.*

127. *Id.* "Considering" ¶ 8.

128. *Id.*

129. *Id.* "Considering" ¶ 12.

130. *Id.* "Considering" ¶ 16.

131. *Id.* "Considering" ¶ 33.

132. *Id.* "Considering" ¶ 8.

133. *Id.* "Considering" ¶ 15.

134. *Id.*

June 2010: The Commission declared that the State has not provided updated information in regards to steps taken to comply with the Court's judgment nor has the State made specific references to steps taken to overcome the budgetary restrictions.¹³⁵

August 23, 2010: The Fourth Special Civil Court in Lima issued Resolution 350 requesting the State to pay the amount owed to the victims.¹³⁶

October 7, 2010: The Fourth Special Civil Court in Lima issued Resolution 359 requesting the State to directly pay the proceeds owed to the victims that has been, "pending for more than 14 years."¹³⁷

October 25, 2010: The Office of the Comptroller filed an appeal to nullify Resolution 359.¹³⁸

March 13, 2011: The Sixth Civil Chamber declared the Office of the Comptroller's appeal to be without merit in Resolution 372.¹³⁹

April 2011: The Officer of the Comptroller appealed Resolution 372.¹⁴⁰

July 1, 2011: The Court recognized the State's partial compliance with the payments ordered in the Judgment for non-pecuniary damage and the State's full compliance with the reimbursement of costs and expenses.¹⁴¹

The Court found that the State did not satisfy the obligation to fully comply with the Constitutional Court's judgments, dated October 21, 1997 and January 26, 2001.¹⁴² The Court stressed that the Sixth Civil Chamber's resolution of March 3, 2010 conclusively established the amounts owed to the victims and that the Sixth Civil Court found the appeal by the Office of the Comptroller General to the resolution "largely unfounded."¹⁴³ However, the Court did consider the State's numerous requests for funds sent to the Ministry of Economy and Finance without

135. *Id.* "Considering" ¶ 18.

136. *Id.* "Considering" ¶ 15.

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.* "Considering" ¶ 13.

142. *Id.* "Considering" ¶ 27.

143. *Id.* "Considering" ¶ 21.

success due to budgetary constraints.¹⁴⁴ The Court reminded the State that the budgetary constraints do not absolve the State from its pre-established responsibilities.¹⁴⁵ The Court noted that the reparation measures should have been fulfilled within a reasonable time and the State had a duty to inform the Court about the measures taken to comply with the Judgment.¹⁴⁶ As a result, the Court ordered the implementation of the Constitutional Court's judgments, in compliance with the ruling of the Sixth Civil Chamber's March 3, 2010 ruling.¹⁴⁷ Additionally, the Court ordered evidence of the efforts made and the State's plan to pay the amount owed to the alleged victims.¹⁴⁸

Next, the Court ordered the State to present detailed information regarding allegations made by the representatives that the State attempted to reduce the amounts owed based on Law No. 28046, a tax law.¹⁴⁹ The Court asked the representatives to submit information about the amounts allegedly deducted by the State.¹⁵⁰

Additionally, the Court recognized the State's full compliance with the order to publish the Judgment.¹⁵¹

Finally, the Court found unnecessary the representatives' request to hold a hearing that would monitor the State's compliance with the Judgment.¹⁵²

January 28, 2015: The Court determined that the State fully complied with its obligation to pay non-pecuniary damages.¹⁵³

The Court decided to keep open the monitoring compliance proceedings with regard to the State's obligation to comply with the judgments of the Constitutional Court of Peru on October 21, 1997 and January 21, 2001 regarding the reimbursement of the amount owed to the victims.¹⁵⁴

The Court requested the State to submit a report indicating its compliance with its pending obligations by July 2, 2015.¹⁵⁵

144. *Id.* "Considering" ¶ 23.

145. *Id.* "Considering" ¶ 24.

146. *Id.* "Considering" ¶ 25.

147. *Id.* "Considering" ¶ 27.

148. *Id.*

149. *Id.* "Considering" ¶ 32.

150. *Id.*

151. *Id.* "Considering" ¶ 36.

152. *Id.* "Considering" ¶ 38.

153. Acevedo Buendía et al. v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Resuelve" ¶ 1 (Jan. 28, 2015) (Available only in Spanish).

154. *Id.* "Resuelve" ¶ 2.

155. *Id.* "Resuelve" ¶ 4.

VII. LIST OF DOCUMENTS

A. Inter-American Court

1. Decision on Preliminary Objections, Merits, Reparations and Costs

[Acevedo Buendía et al. v. Peru, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 198 \(July 1, 2009\).](#)

[Acevedo Buendía et al. v. Peru, Preliminary Objection, Merits, Reparations, and Costs, Concurring Opinion of Judge Sergio García Ramírez, Inter-Am. Ct. H.R. \(ser. C\) No. 198 \(July 1, 2009\).](#)

[Acevedo Buendía et al. v. Peru, Preliminary Objection, Merits, Reparations, and Costs, Concurring Opinion of Judge Víctor Oscar Shiyín García Toma, Inter-Am. Ct. H.R. \(ser. C\) No. 198 \(July 1, 2009\).](#)

2. Provisional Measures

[None]

3. Compliance Monitoring

[Acevedo Buendía et al. v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Jan. 28, 2015\) \(Available only in Spanish\).](#)

[Acevedo Buendía et al. v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(July 1, 2011\).](#)

4. Review and Interpretation of Judgment

[Acevedo Buendía et al. v. Peru, Interpretation of the Judgment on the Preliminary Objection, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. \(ser. C\) No. 210 \(Nov. 24, 2009\).](#)

B. Inter-American Commission

1. Petition to the Commission

[None]

2. Report on Admissibility

[None]

3. Provisional Measures

[None]

4. Report on Merits

[Not Available]

5. Application to the Court

[None]

VIII. BIBLIOGRAPHY

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