

Abrill Alosilla et al. v. Peru

ABSTRACT¹

This case stems from a dispute over the retroactive abolition of a system of automatic adjustment of salaries of the employees of the Water Utility and Sewage Services Company of Lima (“SEDAPAL”). The State admitted to, and the Court found, a violation of the right of 233 employees to recourse before a competent court. The Court also found a violation of their right to compensation in case of expropriation and right to use and enjoyment of property because of the retroactive annulment of the salary increases.

I. FACTS

A. Chronology of Events

1989: The Union of Employees, Professionals, and Technicians of the Water Utility and Sewage Services Company of Lima (“SEDAPAL”) classifies its personnel into three groups: (1) laborers and employees whose legal procedure for establishing remuneration is provided through collective bargaining; (2) Functionaries; and (3) Senior Management.²

June 1989: The SEDAPAL Board of Directors introduces a salary adjustment system named “Salary Scales.”³ It consists of automatic adjustments of monthly remuneration for personnel designated as Functionaries or Senior Management.⁴ The goal of the system is to maintain the salary distribution in the personnel structure.⁵ The system functions automatically: each time the company increases the salary of the lowest laborers as a consequence of collective bargaining, the positions higher

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

2. *Abrill Alosilla et. al. v. Peru*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 223, ¶ 52 (Mar. 4, 2011).

3. *Id.* ¶ 53.

4. *Id.*

5. *Id.*

in the company hierarchy receive a corresponding pay increase.⁶ These higher positions do not ordinarily benefit from the collective bargaining process.⁷

October 1990: Because an increase in salary required by the "Salary Scales" is not executed, a group of workers file a request of *amparo* before the 16th Civil Court of Lima, asking that the system be applied.⁸

December 3, 1990: The 16th Civil Court of Lima issues a judgment accepting the request of *amparo* and orders SEDAPAL to grant personnel designated as Functionaries and Senior Management the recovery of their monthly remuneration of the Salary Scales that were in effect at the time.⁹ In response to the ruling, SEDAPAL appeals.¹⁰

May 29, 1991: The Fifth Civil Chamber of the Superior Court of Lima upholds the judgment of December 3, 1990.¹¹

February 12, 1992: The Civil Chamber of the Supreme Court of Justice upholds the judgment of December 3, 1990.¹² The judgment is not immediately executed.¹³ SEDAPAL and the employees' representatives begin an extra-judicial negotiation process to draft a legal document to determine how the payments are going to be made.¹⁴ The parties and the State agree that the judicial orders upholding payment according to the salary scale system are to be complied with, and that the agreement negotiated by the parties is to be applied as of June 12, 1989.¹⁵

November 26, 1992: The salary scale system is repealed by three consecutive and separate decrees. The third, Law Decree 25876, takes effect on November 26, 1992.¹⁶ SEDAPAL chooses to abolish the salary scale system as of December 13, 1991, the date that the first decree went into effect, instead of November 26, 1992, when the final decree

6. *Id.*

7. *Id.*

8. *Id.* ¶ 55.

9. *Id.*

10. *Id.* ¶ 56.

11. *Id.*

12. *Id.*

13. *Id.* ¶ 56.

14. *Id.* ¶ 58.

15. *Id.*

16. *Id.* ¶¶ 58-60. The first decree, Law Decree No. 757, takes effect on December 13, 1991. *Id.* ¶ 58. The second decree, Law Decree No. 25541, is issued on June 5, 1992. *Id.* ¶ 59.

went into effect.¹⁷ As a result of repealing the salary scale system, SEDAPAL lowers the monthly remuneration of the Functionaries, deducting the portion they receive from raises.¹⁸ Further, a reduction is applied to the workers' monthly remunerations already paid between January and November of 1992 based on the salary scales system because that system ceased to exist as of December 1991.¹⁹ These attempted claw-backs take place starting in March of 1993.²⁰ Through July 1992, monthly remunerations to the workers are not increased in accordance with the salary scales depriving the workers of the agreement reached after collective bargaining.²¹ The result is a reduction in salaries as of December 1992, a retroactive collection of payments between January and November 1992, and no increase in salaries between July and November 1992 as a consequence of the last salary scale adjustment.²²

May 14, 1993: An initial group of 225 workers files a request of *amparo* before the 18th Labor Court of Lima against SEDAPAL for the violation of, and failure to comply with, constitutional labor provisions due to the undue application of Law Decree No. 25876.²³ The workers seek a declaration that the law is applicable as of the date it took effect.²⁴

July 26, 1995: The 18th Labor Court of Lima issues a judgment, declaring the petition admissible, and concluding that Law Decree No. 25876 was applied retroactively from the date it went into effect, which is in violation of the law.²⁵ The court orders SEDAPAL to restore the deductions to the monthly remunerations made against the functionaries starting in the month of December 1992.²⁶ The court also orders that SEDAPAL restore the fraction of the remunerations deducted and subtracted for the period of January to November 1992.²⁷ Finally, the court orders SEDAPAL to grant the functionaries a raise in remunerations on

17. *Id.* ¶ 63.

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.* ¶ 64.

23. *Id.* ¶ 65.

24. *Id.*

25. *Id.* ¶ 66.

26. *Id.*

27. *Id.*

applying the salary scale as of the month of July 1992.²⁸ SEDAPAL appeals the lower court's order.²⁹

September 30, 1996: The Second Labor Chamber of the Superior Court of Lima upholds the judgment.³⁰ SEDAPAL appeals on January 31, 1997.³¹

July 21, 1999: The Constitutional and Social Law Chamber of the Supreme Court of Justice rules in favor of SEDAPAL on the appeal.³² The court decides that the Law Decree No. 25876 is applicable, and that the previous judgment misinterpreted the decree.³³

A second group of workers begins another proceeding and requests that Law Decree No. 25876 be applied as of the date when it entered into force.³⁴ The complaint is initially admissible but is later struck down, and a new ruling is ordered declaring the complaint meritless based on the judgment made by the Constitutional and Social Law Chamber of the Supreme Court of Justice.³⁵

B. Other Relevant Facts

[None]

II. PROCEDURAL HISTORY

A. Before the Commission

April 14, 2000: The representatives of the 233 employees submit a petition to the Commission.³⁶

April 18, 2002: The State acknowledges its international responsibility before the Commission for the violation of Article 25 (Right to Judicial

28. *Id.*

29. *Id.* ¶ 67.

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.* ¶ 69.

35. *Id.*

36. *Abrill Alosilla et. al. v. Peru*, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.384, ¶ 1 (Jan. 16, 2010).

Protection) of the American Convention.³⁷ Yet, the parties, despite having attempted amicable settlement of the dispute, are unable to reach a compromise.³⁸

March 17, 2009: The Commission issues Admissibility and Merits Report No. 8/09 in which it recommends the State to take the measures necessary to guarantee the victims' access to a judicial or other remedy that is adequate and effective in providing reparations for the violation of their rights due to the retroactive application of Law Decree No. 85876.³⁹

B. Before the Court

January 16, 2010: The Commission submits the case to the Court after the State fails to adopt its recommendations.⁴⁰

1. Violations Alleged by Commission⁴¹

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation to Respect Rights) of the American Convention.

2. Violations Alleged by Representatives of the Victims⁴²

Same Violations Alleged by Commission, plus:

Article 21(1) (Right to Use and Enjoyment of Property)

Article 21(2) (Right to Compensation in Case of Expropriation)

all in relation to:

Article 1(1) (Obligation to Respect Rights) of the American Convention.

37. *Abrill Alosilla et. al. v. Peru*, Merits, Reparations, and Costs, ¶ 1.

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.* ¶ 1 n.3.

42. *Id.* ¶ 4. Mr. Juan José Tello Harster serves as representative of the victims. *Id.*

III. MERITS

A. *Composition of the Court*⁴³

Leonardo A. Franco, Acting President
Manuel E. Ventura Robles, Judge
Margarette May Macaulay, Judge
Rhadys Abreu Blondet, Judge
Alberto Pérez Pérez, Judge
Eduardo Vio Grossi, Judge

Pablo Saavedra-Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. *Decision on the Merits*

March 4, 2011: The Court issues its Judgment on Merits, Reparations, and Costs.⁴⁴

The Court found unanimously that Peru had violated:

Article 25(1) (Right of Recourse Before a Competent Court), in relation to Article 1(1) of the Convention, to the detriment of the 233 employees,⁴⁵ because:

*The Court found that the State acknowledged its international responsibility related to the lack of judicial protection regarding the retroactive application of laws repealing the salary scale system to the detriment of the victims.*⁴⁶ *The Court found no dispute between the parties with regard to the facts and the violation of Article 25(1) (Right of Recourse Before a Competent Court).*⁴⁷ *The State emphasized that the acknowledgement of responsibility does not imply the acceptance of the amount established by the representative for material and moral damages.*⁴⁸ *The*

43. Because Judge Diego García-Sayán is a Peruvian national, he did not participate in the deliberation and signing of the Judgment. *Id.* at n.1.

44. *Abrill Alosilla et al. v. Peru, Merits, Reparations and Costs.*

45. *Id.* ¶ 76.

46. *Id.* ¶ 50.

47. *Id.* ¶ 23.

48. *Id.* ¶ 24.

Court found that the acknowledgement made in the proceeding before the Commission had full judicial effect.⁴⁹ However, the Court found it necessary to delimit the scope of the acknowledgement and to resolve disputes between the parties to provide a judgment that adequately protects the human rights of the workers.⁵⁰ The Court determined that the State Political Constitution in force at the time of the facts established the guarantee of non-retroactivity of laws.⁵¹ Domestic law holds that a law may not be applied to facts or situations that took place before its promulgation and publication.⁵² Therefore, the Chamber of Constitutional and Social Law of the Supreme Court ordered an ineffective judicial remedy because it did not honor the domestic law guarantees.⁵³ Taking this into account, the Court accepted the State's acknowledgement of responsibility because there was no judicial protection from the retroactive application of law.⁵⁴ As a consequence, the State violated Article 25(1) (Right of Recourse Before a Competent Court) to the detriment of the 233 employees.⁵⁵

Article 21(1) (Right to Use and Enjoyment of Property) and 21(2) (Right to Compensation in Case of Expropriation), in relation to Articles 25(1) and 1(1) of the Convention, to the detriment of the 233 employees,⁵⁶ because:

The Commission, the representative of the employees, and the State all agreed that the elimination of the salary scale system was proper.⁵⁷ The Court highlighted the fact that the representatives did not object to the elimination of the salary scale system, but rather, an application of a law that retroactively nullified the remuneration adjustment system.⁵⁸ The Court noted that precedents have recognized protected vested rights, understood as part of an individual's wealth.⁵⁹ These rights constitute part of the basis of the non-retroactivity of the law.⁶⁰ The Court found that the system of salary adjustments available to the victims be-

49. *Id.* ¶ 26.

50. *Id.* ¶ 27.

51. *Id.* ¶ 73.

52. *Id.*

53. *Id.* ¶ 76.

54. *Id.*

55. *Id.*

56. *Id.* ¶ 85.

57. *Id.* ¶ 80.

58. *Id.* ¶ 81.

59. *Id.* ¶ 82.

60. *Id.*

fore the application of Law Decree No. 25876 generated increases in remunerations that became part of their wealth, which became a vested right of the employees.⁶¹ The Court found that this vested right was affected by the retroactive application of Law Decree No. 25876.⁶² Further, the deduction in monthly remuneration imposed on the employees further adversely affected the vested right to which they were entitled.⁶³ The Court found that since the employees could not fully enjoy their right to property with regard to the remunerations, the lack of judicial protections negatively affected the worker's vested rights in violation of Articles 21(1) (Right to Use and Enjoyment of Property) and 21(2) (Right to Compensation in Case of Expropriation) with regard to Articles 25(1) and 1(1) of the Convention to the detriment of the 233 employees.⁶⁴

C. Dissenting and Concurring Opinions

[None]

IV. REPARATIONS

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

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

1. Publish the Judgment

The Court ordered that the State publish the Judgment once in the Official Gazette including all the corresponding headings and subheadings, as well as the operative part of the Judgment.⁶⁵

61. *Id.* ¶ 84.

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.* ¶ 92.

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

The Court demanded the payment of the reduction in salaries as of December 1992, the retroactive collection of the payments made between January and November 1992, and no increase in salaries as a consequence of the last applicable salary scale adjustment that corresponded to the victims.⁶⁶ The Court set the amount of pecuniary damages at \$3,475,120.22 for the 233 employees.⁶⁷

2. Non-Pecuniary Damages

The Court ordered the payment of \$1,500 to each of the 233 victims as equitable compensation for non-pecuniary damages.⁶⁸

3. Costs and Expenses

The Court ordered that the State pay \$15,000 to the representative of the victims for costs and expenses incurred in the litigation of this case.⁶⁹ The sum included future expenses that could be incurred domestically or during the monitoring of compliance in accordance with the Judgment.⁷⁰

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

\$3,839,620.22

C. Deadlines

The State was ordered to publish the pertinent parts of the Judgment within six months from notification of the Judgment.⁷¹

66. *Id.* ¶ 102.

67. *Id.* ¶ 115.

68. *Id.* ¶ 132.

69. *Id.* ¶ 139.

70. *Id.*

71. *Id.* ¶ 92.

The State was ordered to pay pecuniary and non-pecuniary damages directly to the beneficiaries, and the payment for costs and expenses directly to the representatives within one year from the notification of the Judgment.⁷²

V. INTERPRETATION AND REVISION OF JUDGMENT

May 13, 2011: The representative of the victims requested an Interpretation of the Judgment on Merits, Reparations and Costs regarding the determination of and justification for the compensation ordered.⁷³

*A. Composition of the Court*⁷⁴

Leonardo A. Franco, Acting President
Manuel E. Ventura Robles, Judge
Margarette May Macaulay, Judge
Rhadys Abreu Blondet, Judge
Alberto Pérez Pérez, Judge
Eduardo Vio Grossi, Judge

Pablo Saavedra-Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. Merits

The Court determined that the representative's request for Interpretation of the Judgment on Merits, Reparations and Costs is inadmissible because the representative does not seek a genuine request for interpretation, but to express his disagreement with the Court's assessment of evidence in determining the reparations and costs.⁷⁵ The Court noted that the representative wants the Court to re-assess issues it has already decided, even though it is not possible to amend or expand the ruling.⁷⁶

72. *Id.* ¶ 140.

73. *Abrill Alosilla et al. v. Peru*, Interpretation of the Judgment on Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 235, ¶ 1 (Nov. 21, 2011).

74. Because Judge Diego García-Sayán is a Peruvian national, he did not take part in this judgment. *Id.* at n.1.

75. *Id.* ¶ 17.

76. *Id.* ¶ 18.

VI. COMPLIANCE AND FOLLOW-UP

May 22, 2013: The Court found that the State fully complied with its obligations to publish the Judgment, pay pecuniary and non-pecuniary damages, and pay costs and expenses.⁷⁷ The Court found it proper to close the case because the State fully complied with the provisions of the Judgment on Merits, Reparations and Costs.⁷⁸

VII. LIST OF DOCUMENTS

A. Inter-American Court

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations and Costs

[Abrill Alosilla et. al. v. Peru, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 223 \(Mar. 4, 2011\).](#)

3. Provisional Measures

[None]

4. Compliance Monitoring

[Abrill Alosilla et. al. v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(May 22, 2013\).](#)

5. Review and Interpretation of Judgment

[Abrill Alosilla et al. v. Peru, Interpretation of the Judgment on Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 235 \(Nov. 21, 2011\).](#)

77. *Abrill Alosilla et. al. v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. “Considering That” ¶¶ 12, 17 (May 22, 2013).*

78. *Id.* “Decides That” ¶ 2.

B. Inter-American Commission

1. Petition to the Commission

[None]

2. Report on Admissibility

[Not Available]

3. Provisional Measures

[None]

4. Report on Merits

[Not Available]

5. Application to the Court

[None]

VIII. BIBLIOGRAPHY

[None]