

Constitutional Court v. Peru

ABSTRACT¹

During 1996 and 1997, there was a conflict between the constitutional organs of the State, namely the Judiciary, against the Executive and Legislature. The conflict arose out of President Alberto Fujimori's manipulation of the Peruvian Constitution to guarantee his re-election. In this case, related with the Ivcher Bronstein v. Peru case, Peru tried to withdraw its acceptance of jurisdiction of the Court to no avail. The Court found that the State violated the guarantees of the judicial process and judicial protection under the American Convention on Human Rights.

I. FACTS

A. Chronology of Events

July 28, 1990: Alberto Fujimori is elected as President for a five-year term, in accordance with the State's 1979 Constitution.²

April 5, 1992: President Fujimori dissolves Congress and the Constitutional Guarantees Court and dismisses many justices from the Supreme Court.³

October 31, 1993: A new Constitution is adopted by a referendum.⁴

December 29, 1993: The State's new Constitution becomes effective.⁵ Article 112 of the Constitution declares, "The presidential mandate is five years. The President may be re-elected immediately for an

1. Chelsea Zwart, Author; Jenna Eyrich, Editor; Elise Cossart-Daly, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Constitutional Court v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 71, ¶ 56.1 (Jan. 31, 2001).

3. *Id.*

4. *Id.*

5. *Id.*

additional period. Once a minimum of another constitutional period has passed, a former president may run for the presidency, subject to the same conditions.”⁶

October 26, 1994: President Fujimori registers as a candidate for the 1995 elections.⁷ The National Elections Board states that President Fujimori is exercising his right to re-election in accordance with Article 112 of the Constitution.⁸ His candidacy is contested.⁹

June 15, 1996 – June 16, 1996: Justices Ricardo Nugent López Chaves, Luis Guillermo Díaz Valverde, Francisco Javier Acosta Sánchez, José García Marcelo, Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo Marsano de Mur are appointed to the new Constitutional Court, which is described as “autonomous and independent.”¹⁰

August 23, 1996: Law No. 26,657, or the Law on the Authentic Interpretation of Article 112 of the Constitution (“Interpretation Law”) is enacted.¹¹ It states that the presidential re-election is “related to and conditioned by the presidential mandates initiated after” the new Constitution was adopted; therefore, the presidential periods in effect before the Constitution was enacted are not taken into consideration.¹² In effect, this allows President Fujimori to run for a third presidential term, which would normally violate Article 112 of the 1993 Constitution.¹³

August 29, 1996: The Lima Bar Association files suit with the Constitutional Court challenging the constitutionality of the Interpretation Law.¹⁴

September 23, 1996: The Court agrees to hear the Lima Bar Association’s suit.¹⁵

6. *Id.*

7. *Id.* ¶ 56.2.

8. *Id.*

9. *Id.*

10. *Id.* ¶ 56.3.

11. *Id.* ¶ 56.4.

12. *Id.*

13. *Id.* ¶ 42(B).

14. *Id.* ¶ 56.5.

15. *Id.*

November 20, 1996: The case is adjudicated in a public hearing in front of the seven justices of the Constitutional Court.¹⁶

December 27, 1996: The justices of the Constitutional Court discuss the working paper on the issue and vote to adopt the opinion, five votes in favor and two against.¹⁷ The draft opinion, written by Justice Rey Terry, states that the Interpretation Law is non-applicable rather than unconstitutional because Article 4 of the Constitutional Court's statute requires six votes in favor to decide unconstitutionality.¹⁸ Justice García Marcelo claims that the working paper is proof of efforts to thwart President Fujimori's re-election.¹⁹

December 28, 1996: Justices García Marcelo and Acosta Sánchez send a letter to the President of the Constitutional Court alleging irregularities by some of the justices when ruling on the inapplicability of the Interpretation Law.²⁰ The justices who signed the judgment are subjected to a campaign of political harassment.²¹

January 14, 1997: Forty members of Congress request that the Constitutional Court make a judgment expressly on the constitutionality of the Interpretation Law.²² The Constitutional Court rejects the request, calling it an "extremely serious attack against the jurisdictional autonomy of the Court."²³

January 15, 1997: Justice Delia Revoredo Marsano De Mur tells Congress that jurisdictional and administrative documents were removed from some of the justices' offices days earlier, in order to intimidate members of the Constitutional Court.²⁴

January 16, 1997: The justices vote again on the opinion written by Justice Rey Terry.²⁵ Three justices vote in favor of non-applicability, while the remaining four justices abstain, thus rendering the

16. *Id.* ¶ 56.6.

17. *Id.*

18. *Id.* ¶¶ 56.6-56.7.

19. *Id.* ¶ 56.7.

20. *Id.* ¶ 56.8.

21. *Id.* ¶ 56.9. The Court did not provide details regarding what the "campaign of political harassment" entailed.

22. *Id.* ¶ 56.11.

23. *Id.*

24. *Id.* ¶ 56.12.

25. *Id.* ¶ 56.13.

Interpretation Law non-applicable.²⁶ Only justices Aguirre Roca, Rey Terry, and Revoredo Marsano sign the judgment.²⁷

Justices Acosta Sánchez and García Marcelo sign a “judgment” declaring the complaint unfounded as it did not receive six concurring votes required to declare the Interpretation Law unconstitutional and only three justices submitted an opinion on the merits of the issue.²⁸ The President of the Constitutional Court claims this judgment lacks “legal value and effect.”²⁹

January 20, 1997: The Lima Bar Association requests clarification of the judgment.³⁰

January 21, 1997: The three justices who signed the judgment discuss and respond to the Lima Bar Association’s request for clarification, stating there is nothing to clarify and the request is inadmissible.³¹

February 27, 1997: Congress organizes an Investigation Committee to examine the claims of harassment and pressure against members of the Constitutional Court.³² The Committee is composed of seven members of Congress.³³

March 21 and 31, April 4 and 18, 1997: The Investigation Committee hears testimony from the justices.³⁴ After Justices García Marcelo and Acosta Sánchez make accusations against the other justices, the investigation changes direction to include all the alleged irregularities that occurred within the Constitutional Court when the clarification ruling was made.³⁵ The justices are not allowed to cross-examine witnesses or raise any defenses.³⁶

May 5, 1997: The Investigation Committee submits an official charge against Justices Aguirre Roca, Rey Terry, and Revoredo Marsano de Mur accusing them of violating the Constitution by submitting an

26. *Id.*

27. *Id.*

28. *Id.* ¶ 56.14.

29. *Id.*

30. *Id.* ¶ 56.15.

31. *Id.*

32. *Id.* ¶ 56.16.

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.* ¶ 56.18.

opinion as though it was a judgment adopted by the full Constitutional Court and by delivering a ruling in the name of the Constitutional Court on the petition for clarification.³⁷

May 6, 1997: The Congressional Permanent Commission appoints an Evaluation Sub-Committee to investigate the constitutional charge against the justices of the Constitutional Court.³⁸

May 8, 1997: Justices Aguirre Roca, Rey Terry, and Revoredo Marsano de Mur refuse to appear before the Evaluation Sub-Committee because they do not recognize its competence.³⁹ They believe this is a “reprisal for their ruling on the Presidential Re-election Law” and that they haven’t received an opportunity to defend themselves.⁴⁰

May 9, 1997: Justices Aguirre Roca, Rey Terry, and Revoredo Marsano de Mur forward the official record of March 14, 1997, to the Evaluation Sub-Committee, confirming their authority to make the clarification judgment.⁴¹

May 14, 1997: The Evaluation Sub-Committee recommends that the Congressional Permanent Committee impeach Justices Aguirre Roca, Rey Terry, and Revoredo Marsano de Mur.⁴²

May 28, 1997: The Impeachment Sub-Committee presents articles of impeachment to Congress.⁴³ Congress dismisses Justice Aguirre Roca, Justice Rey Terry, and Justice Revoredo Marsano de Mur from the Constitutional Court for delivering the clarification decision.⁴⁴

November 17, 2000: President Fujimori, who had fled to Japan, resigns, after ten years in power.⁴⁵

B. Other Relevant Facts

37. *Id.* ¶ 56.19.

38. *Id.* ¶ 56.20.

39. *Id.*

40. *Id.*

41. *Id.* ¶ 56.21.

42. *Id.* ¶ 56.22.

43. *Id.* ¶ 56.25.

44. *Id.*

45. POLITICAL_HANDBOOK OF THE WORLD 2012 1816 (Thomas Muller et al. Eds. 2012).

The dismissal of the three justices leaves the Constitutional Court with only four sitting justices; therefore, the judicial body is legally incapable of overseeing the constitutionality of laws issued by Congress or rules made by the Executive.⁴⁶ The Constitutional Court is unable to perform its essential function of judicial review, depriving the citizens of their right to the constitutional protection provided by the Constitutional Court.⁴⁷

II. PROCEDURAL HISTORY

A. *Before the Commission*

May 15, 1997: The Congress of Peru presents a petition on behalf of Justices Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo Marsano de Mur concerning their dismissal from the Constitutional Court.⁴⁸

October 16, 1997: The State submits a report requesting that the Commission declare the petition inadmissible because the petitioners had not exhausted domestic remedies.⁴⁹

May 5, 1998: The Commission adopts the Admissibility Report on petition No. 35/98.⁵⁰ The report states that the exceptions to the exhaustion of domestic remedies established in Article 46(2) apply because “Peru does not have adequate remedies for protecting the rights in question or due process guaranteeing the due independence and impartiality of the court in hearing this case.”⁵¹ Thus the State’s domestic remedies do not need to be exhausted for the Commission to adopt the petition.⁵²

July 29, 1998: The Commission makes itself available to negotiate a friendly settlement.⁵³

August 14, 1998: The State rejects the possibility of seeking a friendly

46. Constitutional Court v. Peru, Admissibility Report, Report No. 35/98, Inter-Am. Comm’n H.R. Case No. 11.760, ¶ 14 (May 5, 1998).

47. *Id.*

48. Constitutional Court v. Peru, Merits, Reparations, and Costs, ¶ 4.

49. *Id.* ¶ 5.

50. *Id.* ¶ 8.

51. Constitutional Court v. Peru, Admissibility Report ¶ 19.

52. Constitutional Court v. Peru, Merits, Reparations, and Costs ¶ 8.

53. *Id.* ¶ 9.

settlement because it believes this procedure is not applicable in the case.⁵⁴

August 17, 1998: The petitioners indicate that the only possible solution is the reinstatement of the justices.⁵⁵

December 9, 1998: The Commission adopts Report No. 58/98, in which it concludes that by dismissing the justices, the State violated the guarantee of the Constitutional Court's independence and autonomy enshrined in Article 25 (Right to Judicial Protection) of the American Convention, Article 8 (Right to a Fair Trial), and the guarantee of security in a position in public service protected by Article 23(c) (Right to Have Access to Public Service) of the Convention.⁵⁶ The Commission recommends that the State restore the justices to their position on the bench and compensate them for income not received since their removal.⁵⁷ The Commission grants the State two months to comply with these recommendations.⁵⁸

February 1, 1999: The petitioners request the Commission to submit the case to the Court.⁵⁹

February 12, 1999: The State requests a sixty-day extension to continue studying the recommendations made by the Commission, which the Commission grants on February 26, 1999.⁶⁰

April 14, 1999: The State requests a further extension, to which the Commission agrees.⁶¹ The State and the petitioners hold meetings designed to reach a friendly settlement; however, they do not reach an agreement.⁶²

B. Before the Court

July 2, 1999: The Commission submits the case to the Court after the

54. *Id.*

55. *Id.*

56. *Id.* ¶ 10.

57. *Id.*

58. *Id.*

59. *Id.* ¶ 12.

60. *Id.* ¶ 13.

61. *Id.*

62. *Id.*

State failed to adopt its recommendations.⁶³

1. Violations Alleged by Commission⁶⁴

Article 8 (Right to a Fair Trial)

Article 23(1)(c) (Right to Have Access to Public Service)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation to Respect Rights)

Article 2 (Domestic Legal Effects) of the American Convention.

2. Violations Alleged by Representatives of the Victims⁶⁵

Same violations alleged by the Commission.

July 16, 1999: The Peruvian Ambassador to Costa Rica visits the Secretariat of the Court to return the application and the annexes of the case.⁶⁶ At this time, the Ambassador delivers a letter dated July 15, 1999, signed by the Minister for Foreign Affairs of Peru.⁶⁷ The letter states, “By Legislative Resolution No. 27,152, dated July 8, 1999, the Congress of the Republic approved the withdrawal of the recognition of the contentious jurisdiction” of the Court.⁶⁸ It further states, “The withdrawal of the recognition of the Court’s contentious jurisdiction takes immediate effect as of” July 9, 1999, the date on which” the instrument declaring withdrawal from its declaration consenting to the optional clause of in the American Convention recognizing the jurisdiction of the Court was submitted to the General Secretariat of the Organization of American States” and that this applies to any case in which the State has “not yet answered the application filed with the Court.”⁶⁹

August 27, 1999: The International Human Rights Law Group submits an *amicus curiae* brief to the Court.⁷⁰

63. *Id.* ¶ 1.

64. *Id.* ¶ 2.

65. *Id.* The Congress of Peru served as representative of Justices Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo Marsano de Mur.

66. Constitutional Court v. Peru, Merits, Reparations, and Costs, ¶ 18.

67. *Id.*

68. *Id.*

69. *Id.*; see *Ivcher-Bronstein v. Peru*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 74, ¶ 25 (Feb. 6, 2001).

70. *Id.* ¶ 19.

September 10, 1999: The Commission files a brief stating that the Court asserted jurisdiction on July 2, 1999, when the Commission submitted the case to the Court, and therefore the State cannot withdraw its recognition of the Court's jurisdiction by unilateral action.⁷¹ The Commission petitions that the Court continue to exercise jurisdiction over the case.⁷²

September 15, 1999: Curtis Francis Doebbler and Alberto Borea Odría submit an *amicus curiae* brief to the Court.⁷³

September 24, 1999: The Court finds that it has the “inherent authority to determine the scope of its own competence.”⁷⁴ The Court notes that Article 62(3) of the Convention defines the Court's jurisdiction as all cases submitted to it “concerning the interpretation and application of the provisions” of the Convention, provided that the State party involved has recognized such jurisdiction.⁷⁵ States' instruments declaring consent to the optional clause recognizing the Court's binding jurisdiction assumes that the states accept the Court's right to settle any case within its jurisdiction.⁷⁶ The clause recognizing the Court's binding jurisdiction is “so fundamental to the operation of the Convention's system of protection” that it is “an ironclad clause to which there can be no limitations except those expressly provided for in Article 62(1).”⁷⁷ The Court notes that “there is no provision in the Convention that expressly permits [states] to withdraw their declaration of recognition of the Court's binding jurisdiction” and the instrument in which Peru made its declaration of recognition does not allow for withdrawal.⁷⁸ The only way for the State to free itself from the Court's jurisdiction is “to denounce the Convention as a whole, with one year's advance notice.”⁷⁹ The Court thus rules unanimously that the State's purported withdrawal effective immediately is inadmissible and the Court is competent to take the case.⁸⁰

71. *Id.* ¶ 20.

72. *Id.*

73. *Id.* ¶ 19.

74. Constitutional Court v. Peru, Competence, Inter-Am. Ct. H.R. (ser. C) No. 55, ¶ 31 (Sept. 24, 1999).

75. *Id.* ¶ 32.

76. *Id.* ¶ 33.

77. *Id.* ¶¶ 34-35.

78. *Id.* ¶ 38.

79. *Id.* ¶ 39.

80. *Id.* ¶ 52; Constitutional Court v. Peru, Merits, Reparations, and Costs ¶ 21.

September 27, 29, and October 4, 1999: The State submits its notes regarding the Court's judgment on competence.⁸¹ The State declares that the Court is not competent to make judgments regarding the legal validity of its decision to withdraw from the Court's jurisdiction.⁸² It states that the decision is unilateral and rests entirely with the State; therefore, the State is not a party to the proceedings in question.⁸³

April 3, 2000: Justice Delia Revoredo Marsano de Mur requests the Court to adopt provisional measures to ensure that the State refrain from harassing her and her husband, Jaime Mur Campoverde, while the proceedings for reinstatement are being heard.⁸⁴ Ms. Revoredo Marsano de Mur describes intimidation tactics used against them by the State, including bribery, attacks on their property, telephone bugging, and interferences in her husband's business affairs.⁸⁵ Additionally, a criminal proceeding was opened against her after she publicly formed the Front for the Defense of Democracy.⁸⁶ She was required to pay a fine and her property was embargoed.⁸⁷ Her husband also lost an arbitration that was filed irregularly in order to prejudice his case.⁸⁸ Ms. Revoredo Marsano de Mur claims these acts were intended to deprive her of her freedom and property and to prevent her from being reinstated to the Constitutional Court.⁸⁹

April 7, 2000: The President of the Court orders the State to implement measures necessary to protect the physical, mental, and moral integrity of Justice Revoredo Marsano de Mur.⁹⁰

August 14, 2000: The Court orders the State to maintain the protective measures of Justice Revoredo Marsano de Mur, to report the measures it had taken to do so, and to report on the effectiveness of those measures

81. *Id.* ¶ 22.

82. *Id.*

83. *Id.*

84. *Id.* ¶ 32; Constitutional Court v. Peru, Provisional Measures, Order of the President of the Court, Inter-Am. Ct. H.R. (ser. C), "Having Seen," ¶ 1, (April 7, 2000).

85. Constitutional Court v. Peru, Merits, Reparations and Costs, ¶ 32; Constitutional Court v. Peru, Provisional Measures, Order of the President of the Court, ¶ 2.

86. Constitutional Court v. Peru, Provisional Measures, Order of the President of the Court, ¶ 2.

87. *Id.*

88. *Id.*

89. *Id.*

90. Constitutional Court v. Peru, Merits, Reparations and Costs, ¶ 33.

every two months.⁹¹

November 22, 2000: The State fails to appear at a public hearing on the merits of the case.⁹² The Court reiterates that Article 27 of the Court's Rules of Procedure allows the Court to proceed with the case on its own motion when a party fails to appear.⁹³

January 10, 2001: The Commission submits its final arguments to the Court.⁹⁴ The State fails to submit final arguments.⁹⁵

January 22, 2001: The State forwards a legislative resolution acknowledging the Court's jurisdiction over the State.⁹⁶

January 31, 2001: The Court considers prior considerations regarding the proven facts of the case.⁹⁷ The Court first considers whether it has jurisdiction over the State in light of the State's alleged withdrawal from the Court's contentious jurisdiction and the State's procedural inactivity.⁹⁸ The Court concludes that the State's inactivity does not affect the development of the proceedings.⁹⁹ The State's absence does not affect the validity of the judgment.¹⁰⁰

III. MERITS

A. Composition of the Court

Antônio Augusto Cançado Trindade, President

Máximo Pacheco Gómez, Vice President

Hernán Salgado Pesantes, Judge

Oliver H. Jackman, Judge

Alirio Abreu Burelli, Judge

Sergio García Ramírez, Judge

Carlos Vicente de Roux Rengifo, Judge

91. *Id.* ¶ 35.

92. *Id.* ¶ 25.

93. *Id.*

94. *Id.* ¶ 28.

95. *Id.*

96. *Id.* ¶ 31.

97. *Id.* ¶ 57.

98. *Id.* ¶ 58.

99. *Id.* ¶ 60.

100. *Id.* ¶ 62.

Manuel E. Ventura Robles, Secretary
Renzo Pomi, Deputy Secretary

B. Decision on the Merits

January 31, 2001: The Court issues its Judgment on Merits, Reparations, and Costs.¹⁰¹

The Court found unanimously that Peru had violated:

Article 8 (Right to a Fair Trial), in relation to Article 1(1) of the Convention, to the detriment of Mr. Manuel Aguirre Roca, Mr. Guillermo Rey Terry, and Ms. Delia Revoredo Marsano de Mur,¹⁰² because:

Respect for human rights is a limit on the State's power.¹⁰³ Therefore, any State action that violates an article of the Convention is unlawful.¹⁰⁴ Article 8 (Right to a Fair Trial) guarantees that the tribunal involved in proceedings against an individual is "competent, independent, and impartial" and acts in accordance with the law.¹⁰⁵ The right to a fair trial includes both the right to the judicial remedies and the right to the procedural requirements that must be observed in order to bring about judicial guarantees.¹⁰⁶ In other words, the authority in charge of removing a judge must remain impartial in the removal process, and must allow the removed judge to exercise a right of defense.¹⁰⁷ According to Peru's Constitution, judicial independence presumes inviolability and immunity from external pressures and instruction.¹⁰⁸ In cases of dismissal of a justices, Article 100(2) of the State's Constitution specifically provides the accused has the right, during this process, to defend himself with the assistance of a lawyer before the Permanent Commission and before the full Congress."¹⁰⁹

The Court found that the State had not provided the justices with a

101. Constitutional Court v. Peru, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 71 (Jan. 31, 2001).

102. *Id.* ¶¶ 85, 113.

103. *Id.* ¶ 68.

104. *Id.*

105. *Id.* ¶ 66.

106. *Id.* ¶ 69.

107. *Id.* ¶ 74.

108. *Id.* ¶ 76.

109. *Id.* ¶ 79.

proceeding that met the minimum guarantees of due process established by the Convention, and therefore violated Article 8 (Right to a Fair Trial).¹¹⁰ The Court also found that the State prevented the justices from presenting a thorough defense.¹¹¹ First, the Investigation Committee appointed to examine the removal of documents from Justice Revoredo Marsano de Mur's possession ignored Congress's express order not to investigate any matter related to the function of the Constitutional Court.¹¹² In its report, the Committee concluded that the three victims had "usurped' functions of the full Constitutional Court, with the consent of the" Constitutional Court's President.¹¹³ In addition, when the victims appeared before the Investigation Committee they were not informed of the allegations against them regarding the alleged judicial irregularities associated with their decision on the Interpretation Law.¹¹⁴ Further, the victims were not summoned again after the testimony of Justices Acosta Sánchez and García Marcelo to the Investigation Committee, thus they were unable to defend themselves or cross-examine the other two justices regarding their testimony.¹¹⁵ Instead, the Committee made its report assuming the testimony given by Justices Acosta Sánchez and García Marcelo was true.¹¹⁶ Finally, the victims were only given forty-eight hours after learning of the impeachment against them to exercise their defense; when they asked for an extension they were only given an additional five days.¹¹⁷ The decision to dismiss the justices was also not substantiated in any way.¹¹⁸

Article 25 (Right to Judicial Protection), in relation to Article 1(1) of the Convention, to the detriment of Mr. Manuel Aguirre Roca, Mr. Guillermo Rey Terry, and Ms. Delia Revoredo Marsano,¹¹⁹ because:

Article 25 (Right to Judicial Protection) exists to protect individuals who have experienced ineffective domestic remedies.¹²⁰ If the State does not provide an effective remedy to a violation recognized by the Convention, then the State has violated the Convention.¹²¹ The rule of

110. *Id.* ¶ 81.

111. *Id.*

112. *Id.* ¶ 42.

113. *Id.* ¶ 80.

114. *Id.* ¶ 82.

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.* ¶ 86.

120. *Id.* ¶ 89.

121. *Id.*

law in a domestic society includes the existence of both formal recourse and effective recourse.¹²²

The Court found that the State had unjustifiably delayed processing the victims' amparo remedies.¹²³ As established under Peru's Habeas Corpus and Amparo Law No. 23,506, courts must deliver their decisions within twenty days from the day a person files an amparo.¹²⁴ The Temporary Commercial Public Law Center of the Lima Supreme Court failed to respond to the victims' amparos until six months after they were filed.¹²⁵

In addition, the Court that denied the victims' application for amparo was not impartial to the proceedings.¹²⁶ The same judges who composed the Constitutional Court, evaluated the application for amparo, and were involved with the victims' impeachment.¹²⁷ The Court found that this evaluation "was not strictly juridical."¹²⁸

The Court did not rule on:

Article 23(1)(c) (Right to Have Access to Public Service), in relation to Article 1(1) of the Convention,¹²⁹ because:

The Court found that the facts of the case did not establish that the State violated the victims' political rights.¹³⁰ Instead, the Court established that the State violated the victims' right to obtain judicial protection.¹³¹ This violation was resolved with the rulings on Article 8 (Right to a Fair Trial) and Article 25 (Right to Judicial Protection).¹³²

C. Dissenting and Concurring Opinions

[None]

122. *Id.* ¶ 90.

123. *Id.* ¶ 93.

124. *Id.* ¶ 91.

125. *Id.*

126. *Id.* ¶ 96.

127. *Id.*

128. *Id.*

129. *Id.* ¶ 103.

130. *Id.*

131. *Id.*

132. *Id.* ¶¶ 103-104.

IV. REPARATIONS

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

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

1. Reinstate the Victims to the Bench of the Constitutional Court

The Court noted that the victims had already been reinstated to their previous positions on the bench of the Constitutional Court by a resolution of Congress recognizing that it had violated the victims' rights, and that the resolution had been published in the official gazette.¹³³ The Court indicated that these actions were to be understood as “*per se* a moral reparation.”¹³⁴

2. Judgment as a Form of Reparation

The Court indicated that judgment in favor of the victims and in support of their allegations was a form of satisfaction that recognized that the State violated the victims' rights.¹³⁵

3. Punish Responsible Parties

The Court ordered the State to conduct “a real and effective investigation” to identify and punish those responsible for the violations of the victims' rights in order to combat impunity.¹³⁶

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

The Court awarded each victim lost wages and other work-related benefits not received from the date of their dismissal from the

133. *Id.* ¶ 122.

134. *Id.*

135. *Id.*

136. *Id.* ¶¶ 123-124.

Constitutional Court to the date of their reinstatement.¹³⁷ This amount was set by the State, after judgment, at \$255,047 per victim.¹³⁸

2. Non-Pecuniary Damages

The Court also awarded “any other damage that they may duly justify” as a result of the violation of their rights.¹³⁹

3. Costs and Expenses

The Court awarded Justice Manuel Aguirre Roca \$25,000, Justice Guillermo Rey Terry \$25,000, and Justice Revoredo Marsano de Mur \$35,000 for costs and expenses generated in domestic proceedings and proceedings before the Court.¹⁴⁰

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

\$850,141

C. Deadlines

The State must pay all compensation within six months of the notification of the Judgment.¹⁴¹ If payment is not made to the victims by the deadline, interest will begin to accrue to ensure that the said amounts retain their purchasing power.¹⁴²

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

April 23, 2003: The State reported that a complaint regarding the facts

137. *Id.* ¶ 121.

138. Constitutional Court v. Peru, Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., “Considering,” ¶¶ 4, 19 (Feb. 7, 2006). Amount based on the exchange rate of 3.3 Peruvian nuevo sols per U.S. dollar on Feb. 6, 2006. See CONVERTER IN THE PAST, <http://fxtop.com/en/currency-converter-past.php>.

139. Constitutional Court v. Peru, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 71, ¶ 121 (Jan. 31, 2001).

140. *Id.* ¶ 126.

141. *Id.* ¶ 128.

142. *Id.*

of the case was transferred to the Prosecutor's Office Specializing in Unlawful Enrichment and Constitutional Complaints; however the complaint was then ultimately transferred to the Presidency of Congress.¹⁴³ The report noted that the Presidency of Congress had ordered the complaint be put aside, but the State expressed that it would ask for the decision to be reconsidered.¹⁴⁴ Furthermore, the State expressed that it would again request the process for payment begin in compliance with Law No. 27,775, which regulates the State's ability to implement judgments issued by international courts.¹⁴⁵ The amount of salary and benefits in arrears was calculated by the State based on Law No. 27,775, which did not exist when the Judgment was issued on January 31, 2001.¹⁴⁶ Justice Aguirre Roca argued that the State applied Law 27,775 in order to avoid paying interest that should have accrued after the Court's sixth month payment deadline.¹⁴⁷

November 27, 2003: The Court declared that the State had paid the legal costs and expenses awarded to the victims in full.¹⁴⁸ It ordered the State to report on its compliance with the Court's order to conduct an investigation, compensate the victims, and take immediate measures to comply with the Judgment.¹⁴⁹

November 17, 2004: The Court again ordered the State to immediately comply with the Judgment by determining and paying the victims' salary and benefits.¹⁵⁰ The Court noted that even though the Judgment didn't explicitly state interest would begin to accrue, the obligation to pay interest on the unpaid salary and benefits occurred because the State did not comply with the Judgment by the deadline.¹⁵¹ The Court also ordered the State to report the status of the investigation and of its payment of monetary damages by January 31, 2005.¹⁵²

February 7, 2006: The Court declared that the State fully compensated

143. *Id.* "Having Seen" ¶ 3.

144. *Id.*

145. *Id.*

146. *Id.* "Having Seen" ¶ 5.

147. *Id.*

148. Constitutional Court v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., "Having Seen" ¶ 2 (Nov. 17, 2004).

149. *Id.*

150. *Id.* "Whereas" ¶ 9.

151. *Id.*

152. Constitutional Court v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., "Considering" ¶ 3 (Feb. 7, 2006).

each victim for lost salaries and benefits.¹⁵³ The Court left the proceeding open for continued monitoring of compliance regarding the investigation and punishment of individuals responsible for violating the victims' rights and determination and payment of interest due to the victims.¹⁵⁴ The Court ordered the State to submit a report on its compliance by May 26, 2006.¹⁵⁵

August 5, 2008: The Court noted that the extended expiration date for the State to submit its report on its compliance with the Judgment had passed and the State had not submitted anything.¹⁵⁶ The Court left the proceeding open for monitoring of pending compliance and ordered the State to submit a report regarding fulfillment of said compliance by September 26, 2008.¹⁵⁷

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations, and Costs

[Constitutional Court v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 71 \(Jan. 31, 2001\).](#)

[Constitutional Court v. Peru, Competence, Inter-Am. Ct. H.R. \(ser. C\) No. 55 \(Sept. 24, 1999\).](#)

3. Provisional Measures

[Constitutional Court v. Peru, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Mar. 14, 2001\).](#)

[Constitutional Court v. Peru, Provisional Measures, Order of the Court,](#)

153. *Id.* "Declares" ¶ 1.

154. *Id.* ¶ 2.

155. *Id.* "Decides" ¶ 4.

156. Constitutional Court v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., "Having Seen" ¶ 5 (Aug. 5, 2008).

157. *Id.* "Declares" ¶ 2; "Decides" ¶ 2. As of the time of publication, the Court has not issued additional monitoring compliance documents regarding this case.

[Inter-Am. Ct. H.R. \(ser. E\) \(Aug. 14, 2000\).](#)

[Constitutional Court v. Peru, Provisional Measures, Order of the President of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Apr. 7, 2000\).](#)

4. Compliance Monitoring

[Constitutional Court v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Aug. 5, 2008\).](#)

[Constitutional Court v. Peru, Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Feb. 7, 2006\).](#)

[Constitutional Court v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Nov. 17, 2004\).](#)

Constitutional Court v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. (Nov. 27, 2003).

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

Constitutional Court v. Peru, Petition No. 11,760, Inter-Am. Comm'n H.R. (June 2, 1997).

2. Report on Admissibility

[Constitutional Court v. Peru, Admissibility Report, Report No. 35/98, Inter-Am. Comm'n H.R., Case No. 11.760 \(May 5, 1998\).](#)

3. Provisional Measures

[None]

4. Report on Merits

[None]

5. Application to the Court

Constitutional Court v. Peru, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 11.760 (July 2, 1999).

VIII. BIBLIOGRAPHY

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