

# “Five Pensioners” v. Peru

## ABSTRACT<sup>1</sup>

*Between February and September 1992, the State modified and reduced the pension that Mr. Carlos Torres Benvenuto, Mr. Javier Mujica Ruiz Huidobro, Mr. Guillermo Álvarez Hernández, Mr. Reymert Bartra Vásquez, and Mr. Maximiliano Gamarra Ferreyra had earned in accordance with Peruvian legislation up until 1992. The State did not comply with domestic judgments ordering the State to compensate the victims for lost pension sums. The Court found that Peru had violated the victims' rights to property and judicial protection under the American Convention on Human Rights., but did not rule on the alleged violation of Article 26 (Progressive Development of Economic, Social and Cultural Rights).*

## I. FACTS

### A. Chronology of Events

#### 1. Events Pertaining to All Victims

**February 26, 1974:** The Peruvian Government establishes Decree Law No. 20530, which regulates pension regimes for civil servants.<sup>2</sup> According to this law, pensions are equal to the salary of “active public servants” who are in positions similar to those retiring at the moment they retire.<sup>3</sup>

**1981:** The Superintendence of Banks and Insurance (*Superintendencia*

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1. Sean Lask, Author; Heather Hassan, Editor; Elise Cossart-Daly, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Five Pensioners v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am Ct. H.R. (ser. C) No. 98, ¶ 88(a) (Feb. 28, 2003).

3. *Id.* ¶ 88(d).

*de Banca, Seguro y AFP*; “SBS”), a public institution, is privatized.<sup>4</sup> All employees are now considered private employees unless their pensions are regulated by Decree Law No. 20530.<sup>5</sup> Those with pensions regulated by Decree Law No. 20530 may chose to continue being categorized as public employees.<sup>6</sup> As public employees, these pensioners have the right to a pension equal to the salary of an active public servant who occupies the same or similar position they did at the time of retirement.<sup>7</sup>

**October 14, 1992:** The State passes Decree Law No. 25792, which transfers all retired SBS employees who received pensions under Decree Law No. 20530 to the Ministry of Economy and Finance (“MEF”).<sup>8</sup> All of these employees will have their pension equalized with current MEF employees that hold similar positions to the retirees at the time of their retirement.<sup>9</sup> They will no longer be equalized with SBS employees.<sup>10</sup>

**November 1992:** Decree Law 25792 enters into force and all pensions under Decree Law No. 20530 are equalized to those of MEF employees.<sup>11</sup>

## 2. Events Pertaining to Mr. Carlos Torres Benvenuto

**January 1950:** Mr. Torres Benvenuto begins working for the SBS.<sup>12</sup>

**December 31, 1986:** After working at the SBS for thirty-seven years, eleven months, and fifteen days, Mr. Torres Benvenuto retires from his position as Director General.<sup>13</sup> SBS begins making pension payments as of the day he ceases work.<sup>14</sup> Mr. Torres Benvenuto’s pension payments of Peruvian Nuevo Soles (“PEN”) of S.2,450 (approximately \$872 USD) cover all of his family and household expenses, and is enough for him to take care of his six children.<sup>15</sup>

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4. *Id.* ¶ 88(c).

5. *Id.*

6. *Id.* ¶ 88(d).

7. *Id.*

8. *Id.* ¶ 88(f).

9. *Id.*

10. *Id.*

11. *Id.* ¶ 88(g).

12. *Id.* ¶ 83(a).

13. *Id.*

14. *Id.*

15. *Id.* During the late 1980s, the Peruvian currency suffered from hyperinflation, and USD approximations of the Peruvian currency, based on the exchange rate from the time, do

The amount of Mr. Torres Benvenuto's pension is to be determined in accordance with SBS regulations, and adjustments are to be made yearly or biyearly depending on whether the salary of the person occupying his job after retirement would have had an increase in their salary.<sup>16</sup>

**February 13, 1992 - August 1992:** By SBS administrative decision, Mr. Torres Benvenuto's monthly pension is adjusted and reduced to S. 2,086 (approximately \$738 USD).<sup>17</sup>

**September 1992:** Without any prior notice or procedure, Mr. Torres Benvenuto's pension is reduced by 75% down to S.504 (approximately \$178.53 USD).<sup>18</sup>

**October 6, 1992:** Mr. Torres Benvenuto files an application for *amparo* relief against SBS for the cuts to his pension.<sup>19</sup>

**January 7, 1993:** The Eleventh Civil Court in Lima declares his application for *amparo* unsubstantiated.<sup>20</sup>

**September 22, 1993:** The First Civil Chamber of the Supreme Court of Justice declares Mr. Torres Benvenuto's application for *amparo* relief admissible.<sup>21</sup>

**May 2, 1994:** The Constitutional and Social Law Chamber of the Supreme Court of Justice orders the Ministry of Economy and Finance to pay Mr. Torres Benvenuto the pension he had been lawfully receiving.<sup>22</sup>

**November 3, 1994:** In an effort to execute the judgment, the Nineteenth Civil Court of Lima issues a decision reiterating the terms of the Supreme Court's judgment and ordering the Ministry of Economy and

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not provide an accurate marker of the actual value of amounts of Peruvian Soles. See Carlos Alberto Gomez, *Peru's Debt Crisis and Subsequent Shock Economy*, UCLA INTERNATIONAL INSTITUTE, (Feb. 4, 2005), <http://www.international.ucla.edu/article.asp?parentid=19898>. Therefore, all USD approximations are based on the exchange rate at the time of publication, unless indicated otherwise.

16. *Id.*

17. *Id.* ¶ 89(b).

18. *Id.*

19. *Id.* ¶ 89(c).

20. *Id.*

21. *Id.*

22. *Id.*

Finance to comply.<sup>23</sup>

**April 7, 1995:** The SBS decides to equalize the pension of Mr. Torres Benvenuto with the salaries received by its active officials in similar and/or the same positions as his previously held position, and pay Mr. Torres Benvenuto the corresponding payments pursuant to the Supreme Court's judgment.<sup>24</sup>

**August 10, 1999:** The Transitory Corporative Public Law Court of Lima admits a compliance proceeding against SBS, which was initiated by Mr. Torres Benvenuto.<sup>25</sup>

**February 29, 2000:** The Transitory Corporative Public Law Chamber of the Superior Court of Justice of Lima revokes this admission.<sup>26</sup>

**August 3, 2000:** The Constitutional Court of Peru declares the compliance proceedings admissible and requires the SBS to comply and abide by its April 7, 1995 decision.<sup>27</sup>

**March 12, 2002:** The SBS decides, once again, to pay Mr. Torres Benvenuto the difference of what it should have paid him under his original pension and what he has been paid between the dates of November 1992 to January 2002.<sup>28</sup> Furthermore, the SBS also decides to reserve the right to deduct any amount paid in excess of any future decision from the Inter-American Court of Human Rights.<sup>29</sup>

**March 18, 2002:** The SBS pays Mr. Torres Benvenuto the amount of the equalized pension from November 1992 to February 2002.<sup>30</sup> From April 2002 forward, Mr. Torres Benvenuto returns to a monthly-equalized pension of S. 22,552.80 (approximately \$7,988.95 USD).<sup>31</sup>

### 3. Events Pertaining to Mr. Javier Mujica Ruiz-Huidobro

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23. *Id.*

24. *Id.* ¶ 89(d).

25. *Id.* ¶ 89(e).

26. *Id.*

27. *Id.*

28. *Id.* ¶ 89(f).

29. *Id.*

30. *Id.* ¶ 89(g).

31. *Id.*

**1940:** Mr. Ruiz-Huidobro begins working for the SBS.<sup>32</sup>

**August 1, 1983:** After working at SBS for forty-three years and fifteen days, Mr. Ruiz-Huidobro retires from the position as General Superintendent of Banking Area Credits.<sup>33</sup>

**June 1992:** Payroll records indicate that Mr. Ruiz Huidobro receives a pension of S.2,258.67 (approximately \$799.81 USD).<sup>34</sup>

**September 1992:** Without any prior notice or procedure, Mr. Ruiz Huidobro's monthly pension is reduced by 77% down to S.504 (approximately \$178.53 USD).<sup>35</sup>

**October 6, 1992:** Mr. Ruiz Huidobro files an application for *amparo* against SBS for the diminishing decreases in his pension.<sup>36</sup>

**January 7, 1993:** The Eleventh Civil Court in Lima declares Mr. Ruiz Huidobro application for *amparo* inadmissible.<sup>37</sup>

**November 12, 1993:** The First Civil Chamber of the Superior Court of Justice of Lima declares Mr. Ruiz Huidobro's application for *amparo* admissible.<sup>38</sup>

**September 1, 1994:** The Constitutional and Social Law Chamber of the Supreme Court of Justice orders the Ministry of Economy and Finance to pay Mr. Ruiz Huidobro the pension he had been lawfully receiving.<sup>39</sup>

**January 3, 1995:** The Nineteenth Civil Court of Lima issues a decision reiterating the terms of the Supreme Court's judgment and ordering the Ministry of Economy and Finance to comply and pay Mr. Ruiz Huidobro the difference between what he received and what he should have received between September 1992 and December 1994.<sup>40</sup>

**May 4, 1995:** The SBS decides to equalize the pension of Mr. Ruiz

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32. *Id.* ¶ 89(h).

33. *Id.*

34. *Id.* ¶ 89(i), n.76.

35. *Id.*

36. *Id.* ¶ 89(j).

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

Huidobro with the salaries received by its active officials in similar and/or the same positions as his previously held position, and pay Mr. Ruiz Huidobro the corresponding payments pursuant to the Supreme Court's judgment.<sup>41</sup>

**May 13, 1997:** Mr. Ruiz-Huidobro files compliance proceedings against the SBS.<sup>42</sup>

**October 13, 1997:** Compliance proceedings are appealed and declared inadmissible by the Transitory Corporative Public Law Chamber of the Superior Court of Justice of Lima.<sup>43</sup>

**July 9, 1998:** The Constitutional Court of Peru deems the compliance proceedings admissible and demands that the SBS comply with the May 4, 1995 decision.<sup>44</sup>

**March 12, 2002:** The SBS decides, once again, to comply with their May 4, 1995 decision, equalizing Mr. Ruiz Huidobro's pension and paying him the difference of what it should have paid him under his original pension and what he has been paid between the dates of November 1992 to January 2002.<sup>45</sup> Furthermore, the SBS also decides to reserve the right to deduct any amount paid in excess to comply with the decision from the Inter-American Court of Human Rights.<sup>46</sup>

**March 18, 2002:** The SBS pays Mr. Ruiz Huidobro the amount of the equalized pensions they failed to pay him since November 1992.<sup>47</sup> From April 2002 forward, Mr. Ruiz Huidobro returns to a monthly-equalized pension of S.23,391.20 (approximately \$8283.01 USD).<sup>48</sup>

#### 4. Events Pertaining to Mr. Guillermo Álvarez Hernández

**1948:** Mr. Álvarez Hernández begins working for the SBS.<sup>49</sup>

**August 1, 1984:** After working for the SBS for thirty-six years and four

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41. *Id.* ¶ 89(k).

42. *Id.* ¶ 89(l).

43. *Id.*

44. *Id.*

45. *Id.* ¶ 89(m).

46. *Id.*

47. *Id.* ¶ 89(n).

48. *Id.*

49. *Id.* ¶ 89(o).

months, Mr. Álvarez Hernández retires from his position as Administrative Adviser to Senior Management at SBS.<sup>50</sup>

**February 13, 1992:** Under an SBS administrative decision, Mr. Álvarez Hernández's monthly pension to is adjusted and reduced to S.2047.26 (approximately \$724.95 USD).<sup>51</sup>

**September 1992:** Without any prior notice or procedure, Mr. Álvarez Hernández's pension is reduced by 75% down to S.504 (approximately \$178.53 USD).<sup>52</sup>

**October 6, 1992:** Mr. Álvarez Hernández files an application for *amparo* relief against SBS for the diminishing decreases in his pension, and on January 6, 1993 the Eleventh Civil Court in Lima declares his application for *amparo* inadmissible.<sup>53</sup> Then, on November 12, 1993 the First Civil Chamber of the Superior Court of Justice of Lima declares Mr. Álvarez Hernández's application for *amparo* admissible.<sup>54</sup> Consequently, on September 19, 1994 the Constitutional and Social Law Chamber of the Supreme Court of Justice orders the Ministry of Economy and Finance to pay Mr. Álvarez Hernández the pension he had been lawfully receiving prior to September 1992.<sup>55</sup> In an effort to execute the judgment, on December 19, 1994 the Nineteenth Civil Court of Lima issues a decision reiterating the terms of the Supreme Court's judgment and ordering the Ministry of Economy and Finance to comply and pay Mr. Álvarez Hernández his original pension and the entire pension that they failed to pay.<sup>56</sup>

**May 4, 1995:** The SBS decides to equalize the pension of Mr. Álvarez Hernández with the salaries received by its active officials in similar and/or the same positions as his previously held position, and pay Mr. Álvarez Hernández the corresponding payments pursuant to the Supreme Court's judgment.<sup>57</sup>

**December 22, 1999:** Mr. Álvarez Hernández files compliance proceedings against the SBS and the First Transitory Corporative Public

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50. *Id.*

51. *Id.* ¶ 89(p).

52. *Id.*

53. *Id.* ¶ 89(q).

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.* ¶ 89(r).

Law Court of Lima declares the proceeding admissible.<sup>58</sup>

**September 8, 2000:** The Transitory Corporative Public Law Chamber of the Superior Court of Justice of Lima revokes the acceptance of the compliance proceedings.<sup>59</sup>

**December 21, 2000:** The Constitutional Court of Peru declares compliance proceedings admissible and orders the SBS to comply with its May 4, 1995 decision.<sup>60</sup>

**March 12, 2002:** The SBS, once again, decides to comply with their May 4, 1995 decision, equalizing Mr. Álvarez Hernández's pension and paying him the difference of what it should have paid him under his original pension and what he had already been paid.<sup>61</sup> Furthermore, the SBS also decides to reserve the right to deduct any amount paid in excess to comply with the decision from the Inter-American Court of Human Rights.<sup>62</sup>

**March 18, 2002:** The SBS pays Mr. Álvarez Hernández the amount of the equalized pensions they failed to pay him from November 1992 until March 18, 2002; but it does not compensate Mr. Álvarez Hernández for interest on the money he was denied.<sup>63</sup>

**April 2002:** Mr. Álvarez Hernández's monthly pension is reestablished and equalized to S.22,547.34 (approximately \$7984.19 USD).<sup>64</sup>

#### 5. Events Pertaining to Mr. Maximiliano Gamarra Ferreyra

**1954:** Mr. Gamarra Ferreyra begins working for the SBS.<sup>65</sup>

**September 18, 1975:** After working at SBS for twenty years, ten months, and twenty days, Mr. Gamarra Ferreyra retires from his position as the Superintendent of Banks and Insurance.<sup>66</sup>

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58. *Id.* ¶ 89(s).

59. *Id.*

60. *Id.*

61. *Id.* ¶ 89(t).

62. *Id.*

63. *Id.* ¶ 89(u).

64. *Id.*

65. *Id.* ¶ 89(v).

66. *Id.*



**August 1992:** Mr. Gamarra Ferreyra receives a pension of S.2,680.33 (approximately \$949.13 USD).<sup>67</sup>

**September 1992:** Without any prior notice or procedure, Mr. Gamarra Ferreyra's pension is reduced by 81% down to S.504 (approximately \$178.53 USD).<sup>68</sup>

**October 6, 1992:** Mr. Gamarra Ferreyra files an application for *amparo* relief against SBS for the diminishing decreases in his pension, and on January 6, 1993 the Eleventh Civil Court in Lima declares his application for *amparo* inadmissible.<sup>69</sup> Then, on December 30, 1993 the First Civil Chamber of the Superior Court of Justice of Lima declares Mr. Gamarra Ferreyra's application for *amparo* admissible.<sup>70</sup> Consequently, on October 10, 1994 the Constitutional and Social Law Chamber of the Supreme Court of Justice orders the Ministry of Economy and Finance to pay Mr. Gamarra Ferreyra the pension he had been lawfully receiving prior to August 1992.<sup>71</sup>

**May 4, 1995:** The SBS decides to equalize the pension of Mr. Gamarra Ferreyra with the salaries received by its active officials in similar and/or the same positions as his previously held position, and pay Mr. Gamarra Ferreyra the corresponding payments pursuant to the Supreme Court's judgment of October 10, 1994.<sup>72</sup>

**August 6, 1997:** Mr. Gamarra Ferreyra dies, and his widow receives his pension in his place.<sup>73</sup>

**March 12, 2002:** The SBS decides to comply with the May 4, 1995 judgment.<sup>74</sup> The SBS also reserves the right to deduct the sum paid to Mr. Gamarra Ferreyra's widow in accordance with the judgment of the Inter-American Court of Human Rights.<sup>75</sup>

**March 18, 2002:** The SBS decides to equalize the pension of Mr. Gamarra Ferreyra with the salaries received by its active officials in

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67. *Id.*

68. *Id.* ¶ 89(w).

69. *Id.* ¶ 89(x).

70. *Id.*

71. *Id.*

72. *Id.* ¶ 89(y).

73. *Id.* ¶ 89(v), 89(z).

74. *Id.* ¶ 89(aa).

75. *Id.*

similar and/or the same positions as his previously held position, and pay Mr. Gamarra Ferreyra's widow the corresponding payments pursuant to the Supreme Court's judgment which the SBS failed to pay from November 1992 to October 1997.<sup>76</sup> The SBS also reimburses Mr. Gamarra Ferreyra's widow for failed pension payments from November 1997 to February 2002.<sup>77</sup> From April 2002 forward, Mr. Gamarra Ferreyra's widow receives her deceased husband's monthly-equalized pension of S.25,762.50 (approximately \$9,122.71 USD).<sup>78</sup>

#### 6. Events Pertaining to Mr. Reymert Barta Vásquez

**1964:** Mr. Barta Vásquez begins working for the SBS.<sup>79</sup>

**June 13, 1990:** After working at SBS for twenty-five years, ten months, and twenty-six days, Mr. Barta Vásquez retires from his position as Technical Adviser to the Deputy Superintendence of Specialized Entities.<sup>80</sup>

**February 21, 1992:** Mr. Barta Vásquez receives a pension of S.2,700.74 (approximately \$956.35 USD).<sup>81</sup>

**April 1992-October 1992:** Without any prior notice or procedure Mr. Barta Vásquez's pension is suspended.<sup>82</sup>

**November 1992:** Mr. Barta Vásquez's pension is reduced by 81% to S.504 (approximately \$178.53 USD).<sup>83</sup>

**July 1, 1992:** Mr. Barta Vásquez files an application for *amparo* relief against SBS for the diminishing decreases in his pension.<sup>84</sup>

**August 7, 1992:** The Twenty-Sixth Civil Court of Lima issues a precautionary measure ordering the SBS to pay Mr. Barta Vásquez the

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76. *Id.* ¶ 89(bb).

77. *Id.*

78. *Id.*

79. *Id.* ¶ 89(cc).

80. *Id.*

81. *Id.* ¶ 89(dd).

82. *Id.*

83. *Id.*

84. *Id.* ¶ 89(ee).

retirement pension to which he is entitled.<sup>85</sup> This decision was confirmed by the Second Civil Chamber of the Superior Court of Justice of Lima on September 14, 1992, and the SBS pays Mr. Barta Vásquez the pension for the months which payment was suspended at the reduced amount of S.504 (approximately \$416.83 USD).<sup>86</sup>

**January 7, 1993 - June 28, 1994:** The lower Civil Court of Lima declares application for *amparo* admissible and orders SBS to restore Mr. Barta Vásquez's full pension.<sup>87</sup> This decision and order is confirmed by the Second Civil Chamber of the Superior Court of Justice of Lima on October 29, 1993.<sup>88</sup> Then, on June 28, 1994, in an effort to execute the judgment, the Constitutional and Social Law Chamber of the Supreme Court of Justice orders the SBS to comply with the January 7, 1993 judgment and restore Mr. Barta Vásquez's full pension.<sup>89</sup>

**June 14, 1995:** The SBS decides to equalize Mr. Barta Vásquez's pension with the salaries received by its active officials in similar and/or the same positions as his previously held position, and pay Mr. Barta Vásquez the corresponding payments pursuant to the Supreme Court's judgment.<sup>90</sup>

**March 12, 2002:** The SBS decides to comply with its June 14, 1995 decision, equalizing Mr. Ruiz-Huidobro's pension and paying him the difference of what it should have paid him under his original pension and what he has been paid between the dates of November 1992 to January 2002.<sup>91</sup> Furthermore, the SBS also decides to reserve the right to deduct any amount paid in excess to comply with the decision from the Inter-American Court of Human Rights.<sup>92</sup>

**March 18, 2002:** The SBS repays Mr. Barta Vásquez for his reduced pension from November 1992 to February 2002.<sup>93</sup> From April 2002 forward, Mr. Barta Vásquez returns to a monthly equalized pension of S.13,281.24 (approximately \$4,702.99 USD).<sup>94</sup>

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85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.* ¶ 89(ff).

91. *Id.* ¶ 89(gg).

92. *Id.*

93. *Id.* ¶ 89(hh).

94. *Id.*

*B. Other Relevant Facts*

[None]

II. PROCEDURAL HISTORY

*A. Before the Commission*

**February 1, 1998:** All five victims, along with the Human Rights Program of *Centro de Asesoría Laboral of Peru* (Labor Counseling Center of Peru; “CEDAL”) and the Association for Human Rights (*Asociación Pro Derechos Humanos*; “APRODEH”), submit a petition to the Inter-American Commission on Human Rights alleging that by failing to comply with judgments rendered by the Supreme Court of Justice of the Republic of Peru, the State violated the victims’ rights to property, equal protection, and to judicial protection.<sup>95</sup>

**July 16, 1998:** The Commission opens Case No. 12.034, and forwards the relevant parts of the complaint to Peru.<sup>96</sup>

**March 5, 2001:** The Commission adopts Report on the Merits No. 23/01 in which it recommends that the State make adequate reparations, both pecuniary and non-pecuniary, for its human rights violations against all five victims.<sup>97</sup> The Commission also recommends that the State pay all five victims their equalized monthly pensions which should be calculated based off of the salary of the employee who is currently working in each of the five victims’ respective positions, as well as conduct a complete and effective investigation into the non-compliance with the judgments of the Supreme Court of Justice of Peru and the Constitutional Court.<sup>98</sup>

*B. Before the Court*

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95. *Five Pensioners v. Peru*, Admissibility Report, Report No. 89/99, Inter-Am. Comm’n H.R., Case No. 12.034, ¶ 1 (Sept. 27, 1999).

96. *Id.* ¶ 2.

97. *Five Pensioners v. Peru*, Merits, Reparations, and Costs, ¶ 8.

98. *Id.* The Merits Judgment did not indicate which violations of the American Convention on Human Rights were found by the Commission. *See id.* ¶ 8.

**December 3, 2001:** The Commission submits the case to the Court after the State failed to adopt its recommendations.<sup>99</sup>

**February 14, 2002:** The State appoints Javier de Belaunde López de Romaña as *ad hoc* Judge.<sup>100</sup>

**March 1, 2002:** The President of the Court changes the case name from "Torres Benvenuto et al. v. Peru" to "Five Pensioners v. Peru."<sup>101</sup>

**April 22, 2002:** The Commission informs the Court that the State annulled the pertinent part of Decree Law No. 25792 and complied with the rulings of the Supreme Court of Justice and the Constitutional Court.<sup>102</sup> The State's failure to comply with domestic court judgments was one of the fundamental elements in the Commission's application to the Court.<sup>103</sup>

**May 24, 2002:** Per the Commission's request in its application brief, the Court gives the State thirty days to present information regarding amount of monthly pension received by the alleged victims and the salary of persons occupying positions similar to those from which the alleged victims retired.<sup>104</sup>

**July 1, 2002:** In partial compliance with the Court's May 24, 2002 request, the State transmits information regarding the salary of person who occupies similar positions as the alleged victims did at SBS.<sup>105</sup>

**September 2, 2002:** Peru presents proposes terms for a friendly settlement.<sup>106</sup>

#### 1. Violations Alleged by Commission<sup>107</sup>

Article 21 (Right to Property)

Article 25 (Judicial Protection)

Article 26 (Progressive Development of Economic Social and Cultural

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99. *Id.* ¶ 12.

100. *Id.* ¶ 16.

101. *Id.* ¶ 19.

102. *Id.*

103. *Id.*

104. *Id.* ¶ 30.

105. *Id.* ¶ 34.

106. *Id.* ¶ 49.

107. *Id.* ¶ 2.

Rights)

*all in relation to:*

Article 1(1) (Obligation to Respect Rights)

Article 2 (Obligation to Give Domestic Legal Effects to Rights) of the American Convention.

## 2. Violations Alleged by Representatives of the Victims<sup>108</sup>

Same Violations Alleged by Commission, plus:

Article 8 (Right to a Fair Trial) of the American Convention.

### III. MERITS

#### A. *Composition of the Court*<sup>109</sup>

Anônio Augusto Cançado Trindade, President

Sergio García Ramírez, Vice-President

Hernán Salgado Pesantes, Judge

Oliver Jackman, Judge

Alirio Abreu Burelli, Judge

Carlos Vincente de Roux Rengifo, Judge

Javier de Belaunde López de Romaña, Judge *ad hoc*

Manuel E. Ventura Robles, Secretary

Pablo Saavedra Alessandri, Deputy Secretary

#### B. *Decision on the Merits*

**February 28, 2003:** The Court issues its Judgment on Merits, Reparations, and Costs.<sup>110</sup>

The Court found unanimously that Peru had violated:

Article 21 (Right to Property), in relation to Articles 1(1) and 2 of the Convention, to the detriment of Mr. Carlos Torres Benvenuto, Mr. Javier Mujica Ruiz Huidobro, Mr. Guillermo Álvarez Hernández,

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108. *Id.*

109. Máximo Pacheco Gómez did not participate in the decision. *Id.* at n.\*.

110. *See generally* Five Pensioners v. Peru, Merits, Reparations, and Costs.

Mr. Maximiliano Gamarra Ferreyra, and Mr. Reymert Barta Vásquez,<sup>111</sup> because:

*The State arbitrarily changed the amount of the victims' pensions and failed to comply with domestic judicial orders that restored the victims' original pension amount.*<sup>112</sup>

*The Court considered two issues relating to Article 21 (Right to Property).*<sup>113</sup> *First, the Court examined whether the victims' pensions were an acquired right and therefore a property interest.*<sup>114</sup> *The Court looked to both the Peruvian Constitution and relevant judicial decisions, and found that the pensions were in fact an acquired right subject to protection under Article 21 (Right to Property).*<sup>115</sup>

*Second, the Court examined whether the victims' pensions should be equalized with a current SBS employee in the same or similar position as the victims at the time of their retirement.*<sup>116</sup> *As of 1981, SBS changed its employment regime from public to private.*<sup>117</sup> *The State argued that since the victims continued their pension under the public regime, their pension would be equalized with public employees in the same or similar position.*<sup>118</sup> *The Court, however, pointed out that for several years between the victims' retirement and the pension reduction, the victims' pensions were equalized with SBS employees, all of whom were private employees.*<sup>119</sup> *Furthermore, the Court explained, the State interpreted the pension in the same way as the victims for several years prior to the reduction.*<sup>120</sup>

*Next, the Court looked into whether the State was allowed to change the pension scheme to reflect its exact wording, rather than how it had been interpreted.*<sup>121</sup> *The Court held that while the State has the right to change the pension it could only do so for reasons of public utility or social interest, and even then the State must do so by appropriate legal*

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111. *Id.* ¶¶ 90-121, "The Court" ¶ 3.

112. *Id.* ¶ 121.

113. *Id.* ¶ 95.

114. *Id.* ¶¶ 96-103.

115. *Id.* ¶ 103.

116. *Id.* ¶ 104.

117. *Id.* ¶ 108.

118. *Id.* ¶¶ 105-106.

119. *Id.* ¶ 108.

120. *Id.*

121. *Id.* ¶¶ 105, 109.

procedures.<sup>122</sup> *The Court found that the State failed to institute adequate proceedings and completely ignored several judicial decisions in favor of restoring the victims' pensions to their original amount.*<sup>123</sup> *In addition, the Court found that the State should not have reserved the right to deduct any amount paid in excess of the amounts set by the Court's judgment, and declared this reservation void.*<sup>124</sup>

*As a result, the Court found that the State violated Article 21 (Right to Property).*<sup>125</sup>

Article 25 (Judicial Protection), in relation to Articles 1(1) and 2 of the Convention, to the detriment of Mr. Carlos Torres Benvenuto, Mr. Javier Mujica Ruiz Huidobro, Mr. Guillermo Álvarez Hernández, Mr. Maximiliano Gamarra Ferreyra, and Mr. Reymert Barta Vásquez,<sup>126</sup> because:

*The State did not follow domestic judicial decisions rendered in favor of the victims for more than eight years.*<sup>127</sup>

*The Court examined three separate judicial decisions.*<sup>128</sup> *The Court noted that after the decisions in favor of the victims, the State reimbursed the victims for the difference in pension from the date they were decreased to the date Decree Law No. 25792 was passed.*<sup>129</sup> *Mr. Carlos Torres Benvenuto, Mr. Javier Mujica Ruiz Huidobro, Mr. Guillermo Álvarez Hernández, and Mr. Maximiliano Gamarra Ferreyra were reimbursed for their September 1992 and October 1992 installments.*<sup>130</sup> *Mr. Barta Vásquez received reimbursement for April 1992 through October 1992.*<sup>131</sup> *On October 14, 1992, Decree Law No. 25792 made it clear that the victims could not be equalized with private employees like SBS and were equalized with the MEF instead.*<sup>132</sup> *For this period, the Court found that the SBS complied with the domestic court's decision and the Court found no violation of Article 25*

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122. *Id.* ¶¶ 115-116.

123. *Id.* ¶¶ 117-118.

124. *Id.* ¶ 119.

125. *Id.* ¶ 121.

126. *Id.* ¶¶ 122-141, "The Court" ¶ 3.

127. *Id.* ¶ 141.

128. *Id.* ¶ 127.

129. *Id.* ¶ 131.

130. *Id.*

131. *Id.*

132. *Id.* ¶ 88(f).



(Right to Judicial Protection).<sup>133</sup>

However, from November 1992 to February 2002, the State continually ignored a string of judicial decisions in favor of the victims.<sup>134</sup> The State argued that since the MEF paid the pension under Decree Law No. 25792, the State did not have to comply with the judicial decisions since they were against the SBS.<sup>135</sup> The domestic courts dismissed this as the SBS initially decreased the victims' pension and because the MEF was aware of these decisions as they were published.<sup>136</sup> The Court explained that the fact that courts and judiciary bodies exist is not enough to satisfy Article 25 (Right to Judicial Protection), these organizations must be effective and independent to protect the rights of the people, and comply with Article 25.<sup>137</sup> As the State did not comply with the domestic courts' decisions, the Court found that the State violated Article 25 (Right to Judicial Protection) of the Convention.<sup>138</sup>

Finally, from March 2002 to the date of the Court's judgment, the State complied with the domestic courts and reestablished the victims' pension.<sup>139</sup> As such, the Court found no violation of Article 25 (Right to Judicial Protection) during this period.<sup>140</sup>

Article 1(1) (Obligation to Respect Rights), in relation to Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention, to the detriment of Mr. Carlos Torres Benvenuto, Mr. Javier Mujica Ruiz Huidobro, Mr. Guillermo Álvarez Hernández, Mr. Maximiliano Gamarra Ferreyra, and Mr. Reymert Barta Vásquez,<sup>141</sup> because:

*By unilaterally lowering all the victims' pensions and ignoring decisions by domestic courts, the Court found that the State violated Article 1 (Obligation to Respect Rights).<sup>142</sup> All signatories of the Convention are held responsible for the acts of their agents and*

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133. *Id.* ¶ 132.

134. *Id.* ¶¶ 88(h), 89(c), (j), (q), (x), (ee), 127.

135. *Id.* ¶¶ 133, 124(c).

136. *Id.* ¶ 135.

137. *Id.* ¶¶ 136-37.

138. *Id.* ¶ 138.

139. *Id.* ¶ 139.

140. *Id.* ¶ 140.

141. *Id.* ¶¶ 158-68.

142. *Id.* ¶ 166.

organizations even if they acted outside the scope of their authority.<sup>143</sup> Article 2 (Obligation to Give Domestic Legal Effects to Rights) obligations are twofold: to create domestic law analogous to the obligations imposed by the Convention, and to refrain from enacting laws that run counter to the ideals of the Convention.<sup>144</sup> The Court found the State in violation because it failed to adopt measures to comply with the domestic courts.<sup>145</sup> By dismissing the orders of the domestic court, the State did not implement policies and laws in line with the Convention.<sup>146</sup>

The Court found unanimously that Peru had not violated:

Article 26 (Progressive Development of Economic, Social and Cultural Rights), in relation to Articles 1(1) and 2 of the Convention, to the detriment of Mr. Carlos Torres Benvenuto, Mr. Javier Mujica Ruiz Huidobro, Mr. Guillermo Álvarez Hernández, Mr. Maximiliano Gamarra Ferreyra, and Mr. Reymert Barta Vásquez,<sup>147</sup> because:

*Under Article 26, states are encouraged to take part in domestic and international progression of economic, social, and cultural rights.<sup>148</sup> Any steps backwards are only permissible if done so to preserve the general wellbeing of a state.<sup>149</sup> While the victims and the Commission alleged the acts of the State qualify as an unjustifiable step backwards in the progression of social security, the State argued that the victims' pensions were much higher than what the victims were legally entitled to.<sup>150</sup> The Court refused to rule on this Article,<sup>151</sup> as the victims' issues were limited only to them and were not representative of a larger social issue.<sup>152</sup> As such, the Court found Article 26 (Progressive Development of Economic, Social and Cultural Rights) inapplicable to this situation.<sup>153</sup>*

Article 8 (Right to a Fair Trial) of the Convention, to the detriment

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143. *Id.* ¶ 163.

144. *Id.* ¶ 165.

145. *Id.* ¶ 167.

146. *Id.*

147. *Id.* ¶¶ 142-48.

148. *Id.* ¶¶ 142, 145.

149. *Id.* ¶ 142(b).

150. *Id.* ¶¶ 142-44.

151. *Id.* ¶ 146-48.

152. *Id.* ¶ 147.

153. *Id.* ¶¶ 147-48.

of Mr. Carlos Torres Benvenuto, Mr. Javier Mujica Ruiz-Huidobro, Mr. Guillermo Álvarez Hernández, Mr. Maximiliano Gamarra Ferreyra, and Mr. Reymert Barta Vásquez,<sup>154</sup> because:

*The victims' representatives presented insufficient evidence to support a finding that the State violated Article 8 (Right to a Fair Trial).*<sup>155</sup>

*In this case, the victims and Commission were not in agreement.*<sup>156</sup> *The victims wished to introduce evidence not included in the application to the Court in order to prove they did not receive a fair trial, but the Commission opposed this idea.*<sup>157</sup> *The Court noted that this is the first case to be decided using the new Rules of Procedure.*<sup>158</sup> *Under these rules, the Court found that the victims are the true parties and may include facts not in the Commission's application so long as the State has the opportunity to challenge them.*<sup>159</sup> *Here, the victims claimed that the State denied them a fair trial because they changed which judges would hear their cases in order to favor the State.*<sup>160</sup> *The State countered that the victims were not denied a fair trial.*<sup>161</sup> *Further, the State emphasized that the victims did not include these allegations in the application to the Court and were presented after the State filed its answer.*<sup>162</sup> *The Court stated that the victims had the right to bring forth facts that occur subsequent to all the Court filings and present arguments independently of the Commission.*<sup>163</sup> *However, the Court explained that it does parties to add facts to those in the application that took place prior to the filing of the application.*<sup>164</sup>

*Ultimately, the Court did not find it necessary to deliver a ruling on Article 8 (Right to a Fair Trial) because the victims' representatives did not present sufficient evidence that the State violated their Article 8 rights.*<sup>165</sup>

### C. Concurring Opinions

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154. *Id.* ¶¶ 149-157.

155. *Id.* ¶ 157.

156. *Id.* ¶¶ 149(f)-(h), 150(b).

157. *Id.*

158. *Id.* ¶ 152.

159. *Id.* ¶ 149(h).

160. *Id.* ¶¶ 149(a)-(d).

161. *Id.* ¶ 151(a).

162. *Id.*

163. *Id.* ¶¶ 154-55.

164. *Id.* ¶ 153.

165. *Id.* ¶ 157.

### 1. Concurring Opinion of Judge Antônio Augusto Cançado Trindade

In a separate opinion, Judge Cançado Trindade laid out the finer details of the new rights of the victims under the Rules of Procedure.<sup>166</sup> Judge Cançado Trindade observes that, as the Court pointed out in its Judgment, the victims hold the rights enshrined in the American Convention and should be able to argue which rights were violated before the Court.<sup>167</sup> This right, however, does not allow victims to add in new facts that were not presented by the Commission to the Court and the State, as this can prejudice the State's potential defense.<sup>168</sup> Judge Cançado Trindade commended the Court for interpreting the Convention as a living document, in order to "fulfill the changing needs of protection."<sup>169</sup> Judge Cançado Trindade further pointed out that Article 25 (Right to Judicial Protection) of the Convention supports this approach, for if the states must respect the judicial rights of the victims so should the Inter-American Court.<sup>170</sup>

### 2. Concurring Opinion of Judge Sergio García Ramírez

In a separate opinion, Judge García Ramírez discussed three points.<sup>171</sup> The first relates to the addition of facts that were not contained in the application to the Court.<sup>172</sup> According to Judge García Ramírez, with the implementation of the new Rules of Procedure, there is a trend of "increasing procedural rights for the alleged victim."<sup>173</sup> Judge García Ramírez stressed, however, that it is the Commission that puts together the relevant facts, not the victims.<sup>174</sup> After the facts are assembled and presented to the Court, he explained, the victims and Commission may present different legal theories to the Court regarding the same facts.<sup>175</sup> However, Judge García Ramírez insisted that, under no circumstance, should the victim be allowed to introduce facts that

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166. *Five Pensioners v. Peru, Merits, Reparations, and Costs, Concurring Opinion of Judge Antônio Augusto Cançado Trindade, Inter-Am Ct. H.R. (ser. C) No. 98, (Feb. 28, 2003).*

167. *Id.* ¶¶ 12, 18.

168. *Id.* ¶ 11.

169. *Id.* ¶ 16.

170. *Id.* ¶ 20.

171. *Five Pensioners v. Peru, Merits, Reparations, and Costs, Concurring Opinion of Judge Sergio García Ramírez, Inter-Am Ct. H.R. (ser. C) No. 98 (Feb. 28, 2003).*

172. *Id.* § 1.

173. *Id.* § 1 ¶ 1.

174. *Id.* § 1 ¶ 4.

175. *Id.* § 1 ¶ 5.

differ from the application.<sup>176</sup>

Next, Judge García Ramírez examined why the Court ruled on this case even though the State complied with the domestic courts, albeit eight years late.<sup>177</sup> He pointed out that the domestic courts of the State were effective.<sup>178</sup> After turning to the courts, the victims received judgments in their favor, and but for the Administration ignoring the judicial decisions, there would be no need for the Inter-American Court's involvement.<sup>179</sup> The State would not have violated Article 21 (Right to Property) if it complied with the judicial rulings in a timely fashion.<sup>180</sup> Therefore, Judge García Ramírez explained that he believes that the violation of Article 21 (Right to Property) only occurred because of the violation of Article 25 (Right to Judicial Protection).<sup>181</sup>

Finally, Judge García Ramírez examined the Court's ruling on Article 26 (Progressive Development of Economic, Social, and Cultural Rights).<sup>182</sup> While in the past the Court has examined rights that "border on economic, social and cultural rights" it has to date never delved into the real meaning of Article 26.<sup>183</sup> Judge García Ramírez noted that this case does not advance the understanding of Article 26 but highlighted several points about Article 26 nonetheless.<sup>184</sup> He explained that Article 26 gives rise to not only a state duty to establish these rights but also allows the individual a judicial interest in economic, social, and cultural rights.<sup>185</sup> Further, he pointed out that while this case did not have issues that applied to the population as a whole, the Court mentioned how it would handle a similar issue with a large impact on the populace.<sup>186</sup> Judge García Ramírez explained that if a similar issue had a broader impact, the Court would examine the State's compliance with Article 26 obligations and the existence of an individual economic, social, or cultural right.<sup>187</sup>

### 3. Concurring Opinion of Judge Carlos Vincente de Roux Rengifo

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176. *Id.* § 1 ¶ 6.

177. *Id.* § 2.

178. *Id.*

179. *Id.* § 2 ¶ 3.

180. *Id.*

181. *Id.*

182. *Id.* § 3.

183. *Id.* § 3 ¶ 1.

184. *Id.* § 3 ¶ 3.

185. *Id.* § 3 ¶¶ 3-4.

186. *Id.* § 3 ¶ 5.

187. *Id.*

In a separate opinion, Judge de Roux Rengifo commended the Court for refusing to rule on the substantive issue of how the pension should be equalized, instead reserving that for the domestic courts to decide.<sup>188</sup> He noted that the Court restricted its ruling to that of the specific Articles of the Convention that are in question.<sup>189</sup> Judge de Roux Rengifo stressed that the violation of Article 21 (Right to Property) is directly linked to the violation of Article 25 (Right to Judicial Protection), and stated that the Court did not emphasize this point enough.<sup>190</sup> In Judge de Roux Rengifo's Opinion, the judgment could suggest violations of Article 21 (Right to Property) and 25 (Right to Judicial Protection) independent of each other, a fact he attempted to dismiss in his separate opinion.<sup>191</sup>

#### IV. REPARATIONS

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

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

###### 1. Judgment as a Form of Reparation

The Court explained that the judgment in and of itself should be understood as a form of reparation and should serve as a form of satisfaction for the victims.<sup>192</sup>

###### 2. Investigation and Punishment

The State must adopt any necessary measures to identify, prosecute, and punish those responsible for not adhering to the judicial decisions of the domestic courts.<sup>193</sup>

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188. *Five Pensioners v. Peru, Merits, Reparations, and Costs, Concurring Opinion of Judge Carlos Vincente de Roux Rengifo, Inter-Am Ct. H.R. (ser. C) No. 98 (Feb. 28, 2003).*

189. *Id.*

190. *Id.*

191. *Id.*

192. *Five Pensioners v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am Ct. H.R. (ser. C) No. 98, "The Court" ¶ 4.*

193. *Id.* ¶ 179. The Court also ordered the State to determine possible consequences that resulted from the violation of the victim's right to property via domestic legislation. *See id.* "The Court" ¶ 5.

*B. Compensation*<sup>194</sup>

The Court awarded the following amounts:

## 1. Pecuniary Damages

[None]

## 2. Non-Pecuniary Damages

The Court ordered the State to pay \$3,000 each to Mr. Carlos Torres Benvenuto, Mr. Javier Mujica Ruiz Huidobro, Mr. Guillermo Álvarez Hernández, Mr. Reymert Barta Vásquez, and to the widow of Mr. Maximiliano Gamarra Ferreyra for damages as their quality of life diminished when their pensions were reduced.<sup>195</sup>

## 3. Costs and Expenses

The Court ordered the State to pay \$3,000 each in expenses to Mr. Carlos Torres Benvenuto, Mr. Javier Mujica Ruiz Huidobro, and Mr. Guillermo Álvarez Hernández for expenses incurred during the domestic proceedings and proceedings before the Inter-American Court.<sup>196</sup>

The Court ordered the State to pay \$2,000 each in expenses to Mr. Reymert Barta Vásquez and to the widow of Mr. Maximiliano Gamarra Ferreyra for expenses incurred during the domestic proceedings and proceedings before the Inter-American Court.<sup>197</sup> The Court ordered the State to pay \$3,000 in costs to CEDAL, and \$500 in costs to CEJIL.<sup>198</sup>

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

\$31,500

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194. All USD amounts in the Compensation and Monitoring Compliance section reflect the USD amounts ordered by the Court at the time of judgment.

195. *Id.* ¶ 180.

196. *Id.* ¶ 182.

197. *Id.*

198. *Id.*

### C. Deadlines

The State has one year from notification of the judgment to comply with the costs and reparations ordered by the Court.<sup>199</sup> Should the State fail to compensate the victims on time, the State must pay interest on the amount owed corresponding to ban interest payments in arrears in Peru.<sup>200</sup>

## V. INTERPRETATION AND REVISION OF JUDGMENT

[NONE]

## VI. COMPLIANCE AND FOLLOW-UP

**November 17, 2004:** After three separate communications with the State, the Court has not received an update as to the progress towards instituting the decision of February 28, 2003.<sup>201</sup> The State was given a year to comply with the judgment and as of March 12, 2004, that deadline has passed.<sup>202</sup> Since the Court received no information from the State, it established a new deadline of January 31, 2005 for the State to comply with the judgment.<sup>203</sup> It also called upon the victims to present their comments to the State's report once it is sent to the Court.<sup>204</sup>

**September 12, 2005:** The State finally responded to the Court, and claimed it was waiting until they had specific results to report back.<sup>205</sup> To date, the State has passed several resolutions to pay the non-pecuniary damages, costs, and to start investigating who was responsible for ignoring the domestic courts' decisions.<sup>206</sup> The victims and the Commission painted a different picture, and highlighted the fact that not only have the victims not been paid, but their pensions were reduced nearly 1000%.<sup>207</sup> The Court requested specific information as

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199. *Id.* ¶ 184.

200. *Id.*

201. *Five Pensioners v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R.* (Nov. 17, 2004).

202. *Id.* at 3 ¶ 6.

203. *Id.* at 4 ¶ 1.

204. *Id.* at 4 ¶ 2.

205. *Five Pensioners v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R.*, 4 ¶ 3(h) (Sep. 12, 2005).

206. *Id.* at 3-4 ¶¶ 3(a)-(h).

207. *Id.* at 4-7 ¶¶ 4-6.



to the investigation, details as to why the victims' pension was again reduced, and that the State submit a report as of November 30, 2005 indicating measures taken to comply with the February 28, 2003 Judgment.<sup>208</sup>

**July 4, 2006:** The State did not comply with the November 30, 2005 deadline and the Court issued several communications over seven months asking for a report.<sup>209</sup> Again the Court demanded that the State comply with the February 28, 2003 judgment and give information as the reduction in the victims' pension.<sup>210</sup>

**December 3, 2008:** The victims inform the Court that no investigations are underway regarding why the domestic judicial decisions were ignored.<sup>211</sup> The State also claimed that the victims signed away any right to claiming interest on the late payments of non-pecuniary damages and costs.<sup>212</sup> Further, the State explained that SBS has initiated judicial proceedings to reduce the pensions of the victims in order to reflect the differences in the public and private pension regimes.<sup>213</sup> Because of this, the courts reduced the victims' pension pending this new judicial action.<sup>214</sup> In light of all this, the Court demanded a hearing to take place to determine the State's compliance with the judgment of February 28, 2003.<sup>215</sup>

**November 24, 2009:** After the hearing, the Court found that the State fully paid non-pecuniary damages and reimbursed the victims the cost of both the domestic and international litigation.<sup>216</sup> The victims also informed the Court that they did in fact waive their rights to interest accrued since March 15, 2004.<sup>217</sup> However, the Court found that despite numerous criminal actions filed against the State by the victims, the State still has not conducted an investigation into who was responsible

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208. *Id.* at 10 ¶ 13, 11 ¶¶ 1-5.

209. *Five Pensioners v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., 4 ¶ 3(h) (July 4, 2006).*

210. *Id.* at 7-8.

211. *Five Pensioners v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., 5 ¶ 12 (Dec. 3, 2008).*

212. *Id.* ¶ 8.

213. *Id.* at 3-4 ¶ 4-7.

214. *Id.*

215. *Id.* at 6 ¶¶ 1-2.

216. *Five Pensioners v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., 8-9 ¶¶ 17-21 (Nov. 24, 2009).*

217. *Id.*

for ignoring the domestic judicial decisions.<sup>218</sup> Further, the State claimed it interpreted the Court's ruling as requiring it to re-litigate the matter in domestic courts.<sup>219</sup> As such, it submitted to the domestic courts whether or not the victims should be equalized with private employees.<sup>220</sup> The courts determined the pensions should be equalized with public employees and denied SBS' request that the victims pay back everything they received in excess of this.<sup>221</sup>

The Court dismissed all of these proceedings as a misreading of the February 28, 2003 judgment and stated that there can be no appeal of the Inter-American Court's ruling.<sup>222</sup> The Court deemed that the State has complied with the repayment of non-pecuniary damages and costs but will remain monitoring the State until the State complies with the rest of the February 28, 2003 judgment.<sup>223</sup>

**November 30, 2011:** The State did not offer any evidence of an investigation into who was responsible for ignoring the domestic judicial decisions.<sup>224</sup> It did, however, point out that the victims have sought criminal actions against the State.<sup>225</sup> The Court pointed out that this does not qualify as an investigation, and required that the State conduct an investigation and submit evidence of the investigation in order to satisfy this requirement of the judgment.<sup>226</sup> The State explained that though the domestic courts ordered the victims pensions to be reinstated to equalize with SBS, the courts did not determine how they should proceed regarding alignment with public or private regimes.<sup>227</sup> The State further emphasized that the victims must proceed in the domestic courts.<sup>228</sup>

The Court stated that the victims must inform the Court as to how they have proceeded in the domestic courts in order to declare this part of the judgment satisfied.<sup>229</sup> Finally the Court ordered the State to inform it as to why they again decreased the victims' pensions.<sup>230</sup> The

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218. *Id.* at 4-8 ¶¶ 8-16.

219. *Id.* at 10 ¶ 23.

220. *Id.* at 10-12 ¶¶ 24-26.

221. *Id.*

222. *Id.* at 14 ¶¶ 32-34.

223. *Id.* at 15-16.

224. *Five Pensioners v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., 2-6 ¶¶ 6-19 (Nov. 30, 2011).*

225. *Id.* at 4-5 ¶¶ 13-16.

226. *Id.*

227. *Id.* at 2-6 ¶¶ 6-19.

228. *Id.* at 11 ¶ 25.

229. *Id.* at 12 ¶ 29.

230. *Id.* at 14 ¶ 36.

Court also required specific evidence as to how these new proceedings comply with the right to property and judicial protection and the judgment of February 28, 2003.<sup>231</sup>

## VII. LIST OF DOCUMENTS

### A. *Inter-American Court*

#### 1. Preliminary Objections

[None]

#### 2. Decisions on Merits, Reparations and Costs

[Five Pensioners v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am Ct. H.R. \(ser. C\) No. 98 \(Feb. 28, 2003\).](#)

[Five Pensioners v. Peru, Merits, Reparations, and Costs, Concurring Opinion of Judge Antônio Augusto Cançado Trindade, Inter-Am Ct. H.R. \(ser. C\) No. 98 \(Feb. 28, 2003\).](#)

[Five Pensioners v. Peru, Merits, Reparations, and Costs, Concurring Opinion of Judge Sergio García Ramírez, Inter-Am Ct. H.R. \(ser. C\) No. 98 \(Feb. 28, 2003\).](#)

[Five Pensioners v. Peru, Merits, Reparations, and Costs, Concurring Opinion of Judge Carlos Vincente de Roux Rengifo, Inter-Am Ct. H.R. \(ser. C\) No. 98, \(Feb. 28, 2003\).](#)

#### 3. Compliance Monitoring

[Five Pensioners v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Nov. 30, 2011\).](#)

[Five Pensioners v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Nov. 24, 2009\).](#)

[Five Pensioners v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Dec. 3, 2008\) \(Available only in Spanish\).](#)

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231. *Id.*

[Five Pensioners v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(July 4, 2006\).](#)

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

[Five Pensioners v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Sep. 12, 2005\) \(Available only in Spanish\).](#)

*B. Inter-American Commission*

1. Petition to the Commission

[Not available]

2. Report on Admissibility

[Five Pensioners v. Peru, Admissibility Report, Report No. 89/99, Inter-Am. Comm'n H.R., Case No. 12.034 \(Sept. 27, 1999\).](#)

3. Provisional Measures

[None]

4. Report on Merits

[Not available]

5. Application to the Court

[Not available]

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