

Muelle Flores v. Peru

ABSTRACT¹

This case is about a retired worker of a State-owned mining company who lost his pension when the company was privatized. This case is notable as it was the first one where the Court had the chance to discuss the right to social security. On the merits, the Court found Peru in violation of, inter alia, Article 26 and Article 21 of the American Convention.

I. FACTS

A. Chronology of Events

June 1981 – September 1990: Oscar Muelle Flores is employed by Empresa Especial Minera Tintaya S.A. (“Tintaya”), a state-owned mining company.² Law Decree 20530 sets the pension for male employees of the State who have worked in the public sector for more than fifteen years, and women who have worked more than twelve and a half years.³ Retired civil workers with over 20 years of service acquire the right to have their pension adjusted to mirror the wages of current civil workers, thus accounting for an increase in wages.⁴ This equalization of wages provision is added to the State Constitution Decree.⁵

May 15, 1990: Tintaya adopts its pension scheme in compliance with Law Decree 20530.⁶

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² Muelle Flores v. Peru, Report on Merits, Report No. 3/17, Inter-Am. Comm’n H.R., Case No. 12.772, ¶¶ 13,19.(Jan. 27, 2017).

³ Muelle Flores v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Judgement, Inter-Am Ct. H.R. (ser. C) No. 375, ¶ 46 (Mar. 6, 2019).

⁴ *Id.* ¶ 47.

⁵ *Id.* ¶ 48.

⁶ Muelle Flores v. Peru, Report on Merits, ¶ 14.

September 30, 1990: Mr. Muelle Flores officially retires after working for over 35 years.⁷ As part of his retirement benefits, Mr. Muelle Flores receives a pension for his 35 years of work for the State.⁸ Mr. Muelle Flores' rights to the pension plan as a civil worker are established by Law Decree 20530.⁹

February 27, 1991: Mr. Muelle Flores receives a notice from Tintaya explaining that his current pension benefits granted to him under Law Decree 20530 are being suspended.¹⁰ The notice explains that the Law Decree 20530 is no longer applicable because Tintaya's workers are now considered private sector employees, and therefore their pension is now regulated by private sector labor law.¹¹

April 18, 1991: Mr. Muelle Flores files an amparo application to protect his rights to the pension plan under Law Decree 20530.¹²

July 19, 1991: The Fifth Civil Court of Lima reviews Mr. Muelle Flores' amparo application, declares his application legitimate and well-founded, and revokes Tintaya's pension suspension plan.¹³ The Court also finds that Tintaya's actions violated the constitutional rights of Mr. Muelle Flores and other civil employees.¹⁴

May 29, 1992: Tintaya appeals the decision of the lower court, but the Second Civil Division of the Superior Court of Lima affirms the ruling.¹⁵

February 2, 1993: The Supreme Court of Justice affirms the two lower courts holdings, and orders Mr. Muelle Flores' rights to the pension plan according to Law Decree 20530.¹⁶

February 17, 1993: Despite the order of the Supreme Court of Justice, Tintaya issues a written communication stating it will continue to

⁷ Muelle Flores v. Peru, Report on Merits, ¶¶ 14, 19.

⁸ *Id.* ¶¶ 7, 14.

⁹ *Id.*

¹⁰ *Id.* ¶ 19.

¹¹ Muelle Flores v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 49.

¹² Muelle Flores v. Peru, Report on Merits, ¶ 20.

¹³ *Id.*

¹⁴ *Id.* ¶ 21.

¹⁵ Muelle Flores v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 55.

¹⁶ Muelle Flores v. Peru, Report on Merits, ¶¶ 22-23.

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suspend pension payments of its employees and former employees who are receiving those benefits under Law Decree 20530.¹⁷

November 29, 1994: The State-owned company, Tintaya, officially becomes a private company.¹⁸

February 23, 1995: Mr. Muelle Flores files an application for a second amparo against Tintaya's recent decision not to comply with the court order.¹⁹ The second amparo filed by Mr. Muelle Flores is declared inadmissible by the Seventeenth Civil Court of Lima.²⁰ Mr. Muelle Flores appeals this decision.²¹

July 14, 1995: The judgment of the Seventeenth Civil Court of Lima is affirmed by the First Civil Division of the Superior Court, reasoning that a second amparo suit cannot be brought due to *res judicata*.²² Mr. Muelle Flores files an additional appeal for the second amparo with the Supreme Court of Justice.²³

December 18, 1995: The Fifth Civil Court of Lima declares Tintaya in non-compliance with the first amparo judgment issued on February 2, 1993, and that it must comply with the order within three days.²⁴ In addition, the Court states that Tintaya has been avoiding compliance with the judgement and that the February 2, 1993 judgement was a final order.²⁵

August 26, 1997: The Supreme Court of Justice denies Mr. Muelle Flores' second amparo appeal declaring it inadmissible due to *res judicata*.²⁶ Mr. Muelle Flores files an appeal with the Constitutional Court.²⁷

¹⁷ Muelle Flores v. Peru, Report on Merits, ¶ 24.

¹⁸ Muelle Flores v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 57-58.

¹⁹ Muelle Flores v. Peru, Report on Merits, ¶ 25.

²⁰ *Id.* ¶ 26.

²¹ *Id.*

²² *Id.* ¶ 27.

²³ *Id.*

²⁴ *Id.* ¶¶ 35, 63.

²⁵ Muelle Flores v. Peru, Report on Merits, ¶¶ 35, 63.

²⁶ *Id.* ¶ 28.

²⁷ *Id.*

April 7, 1997: For the second time, the Fifth Civil Court of Lima issues a judgement ordering Tintaya to comply with the Supreme Court's order to comply with the first amparo proceeding.²⁸ However, the judgment does not contain any coercive measures to ensure compliance with the order.²⁹

June 30, 1997: Mr. Muelle Flores files a criminal complaint with the Second Criminal Court.³⁰ In the complaint, Mr. Muelle Flores alleges certain Tintaya company officials have abused their authority and violated his right to work.³¹ However, the Court finds the statute of limitations has expired and closes the action.³²

October 29, 1997: The Supreme Court of Justice responds to a complaint filed by Tintaya in 1994, in which the company argues that Mr. Muelle Flores' inclusion in the pension plan was unlawful.³³ However, the Court finds Tintaya's complaint without merit, and concludes Mr. Muelle Flores is rightfully entitled to the pension plan granted under Law Decree 20530.³⁴

October 1998: The Ombudsperson's Office releases a report detailing how various administrations of the State have failed to comply with court judgments.³⁵ The Ombudsperson's Office finds the majority of these cases involve State's non-compliance with financial orders and adjusting employee pensions.³⁶

December 10, 1999: The Constitutional Court finds Mr. Muelle Flores' second amparo application well founded and revokes the decisions of the lower courts regarding the second amparo action.³⁷ The Court then orders Tintaya to continue payment of the pension plan according to Law Decree 20530.³⁸

²⁸ Muelle Flores v. Peru, Report on Merits, ¶ 36.

²⁹ *Id.* ¶ 63.

³⁰ Muelle Flores v. Peru, Admissibility Report, Report No. 106/10, Inter-Am. Comm'n H.R., Case No. Case 12.772, ¶ 15 (July 16, 2010).

³¹ *Id.*

³² *Id.*

³³ *Id.* ¶ 14.

³⁴ *Id.*

³⁵ Muelle Flores v. Peru, Report on Merits, ¶ 58.

³⁶ *Id.*

³⁷ *Id.* ¶ 29.

³⁸ *Id.* ¶¶ 29-30.

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August 24, 2000: Mr. Muelle Flores gives notice that he is receiving pension benefits from Tintaya, but not to the extent that he is legally entitled.³⁹ Mr. Muelle Flores contends that the amount Tintaya is paying to his pension is considerably less than what he is entitled to.⁴⁰

May 12, 2002: Law 27719 is enacted.⁴¹ It provides that those who are receiving their pension from an institution that has been dissolved or privatized, will from now on receive their pension from the Ministry of Economy and Finance.⁴²

December 30, 2004: Law 28449 is enacted.⁴³ It provides that the pension plan under Law Decree 20530 will no longer allow retired pensioners to “mirror” their wages with those of active public workers.⁴⁴ Additionally, the Ministry of Economy and Finance will distribute pension benefits under Law Decree 20530.⁴⁵ This legislation is later deemed constitutional in 2005 by the Constitutional Court of Peru.⁴⁶

January 5, 2009: The 38th Civil Court of Lima orders Tintaya to comply with the State order within three days, but the order does not contain any coercive measures to ensure compliance.⁴⁷

March 23, 2009: The 38th Civil Court of Lima again orders the company to comply with the judgement within three days, but, again, the order does not contain any coercive measures to ensure compliance.⁴⁸

April 26, 2010: The 38th Civil Court of Lima finds that after privatization, Tintaya is no longer the same company when the judgment was first ordered.⁴⁹ As a result, the Court deems Mr. Muelle

³⁹ Muelle Flores v. Peru, Report on Merits, ¶ 37.

⁴⁰ Muelle Flores v. Peru, Admissibility Report, ¶ 16.

⁴¹ Muelle Flores v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 101.

⁴² *Id.*

⁴³ *Id.* ¶ 104.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Muelle Flores v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 86.

⁴⁸ *Id.*

⁴⁹ *Id.* ¶ 89.

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Flores' claim to the pension plan under Law Decree 20530 no longer viable.⁵⁰

May 17, 2010: Mr. Muelle Flores files an appeal challenging the holding of the 38th Civil Court of Lima.⁵¹

May 17, 2012: The 33rd Civil Court issues a judgement requiring the former company known as Tintaya to comply with the order given by the Supreme Court on February 2, 1993.⁵²

October 10, 2013: The Superior Court of Justice annuls the judgement given on May 17, 2012, reasoning new issues have arisen because the company had become private, and Mr. Muelle Flores' issues are with the State as opposed to the company.⁵³ The Court ordered that a new resolution be discussed considering the new circumstances of the case.⁵⁴

B. Other Relevant Facts

[NONE]

II. PROCEDURAL HISTORY

A. Before the Commission

April 8, 1998: Mr. Muelle Flores files a petition on his own behalf with the Inter-American Commission on Human Rights.⁵⁵ Mr. Muelle Flores alleges the State has failed to comply with two amparo judgments that recognize Mr. Muelle Flores' rights to a pension and compensation system as a former civil employee of the State.⁵⁶

July 16, 2010: The Commission issues admissibility report 106/10, which declares the petition admissible in part.⁵⁷

⁵⁰ Muelle Flores v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 89.

⁵¹ *Id.* ¶ 90.

⁵² *Id.* ¶ 92.

⁵³ Muelle Flores v. Peru, Report on Merits, ¶ 46.

⁵⁴ *Id.* ¶ 47.

⁵⁵ *Id.* ¶ 1.

⁵⁶ *Id.*

⁵⁷ Muelle Flores v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 2(b).

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The State does not request the Commission to rule the petition inadmissible.⁵⁸ Rather, it brings to the attention of the Commission that Tintaya has already made a court appearance to clarify that Mr. Muelle Flores' pension has become the responsibility of the Ministry of Economy and Finance.⁵⁹

January 27, 2017: The Commission issues Merits Report No. 3/17.⁶⁰ The Commission concludes that the State is responsible for the violation of Article 8(1) (Right to a Fair Trial), Article 21 (Right to Property), Article 25(1) (Right of Recourse Before a Competent Court) and Article 25(2)(c) (Obligation to ensure that competent authorities shall enforce proper remedies) in relation to Article 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights).⁶¹ The Commission recommends that the State comply with the Court orders of February 2, 1993, and December 10, 1999.⁶² This would ensure Mr. Muelle Flores would receive his pension.⁶³ Furthermore, the Commission recommends the State to provide material and non-pecuniary damages as reparations, and that the State adopt legislative and other measures to ensure that a recurrence of the violations described in the report do not occur again.⁶⁴

B. Before the Court

July 13, 2017: The Commission submits the case to the Court, after the State failed to adopt its recommendations.⁶⁵

September 20, 2017: At the request of Mr. Muelle Flores, the Court appoints Inter-American Court Public Defenders Renée Mariño Álvarez and Isabel Penido de Campos Machado.⁶⁶

April 2, 2018: The State submits its preliminary objections claiming domestic remedies had not been exhausted, and a violation of Article 26

⁵⁸ Muelle Flores v. Peru, Admissibility Report, ¶¶ 19-21.

⁵⁹ *Id.* ¶ 21.

⁶⁰ Muelle Flores v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 2.

⁶¹ *Id.* ¶ 2(c).

⁶² Muelle Flores v. Peru, Report on Merits, "Recommends" ¶ 1.

⁶³ *Id.*

⁶⁴ *Id.* "Recommends" ¶ 3.

⁶⁵ *Id.* ¶ 3.

⁶⁶ *Id.* ¶ 5.

had been improperly included.⁶⁷ Furthermore, the State argues it should not be held responsible for the violations alleged by the Commission.⁶⁸ **September 27, 2018:** The representatives of Mr. Muelle Flores ask the Court to consider adopting provisional measures according to article 63(2), reasoning that Mr. Muelle Flores may suffer irreparable harm if the provisions are not granted.⁶⁹

1. Violations Alleged by Commission⁷⁰

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal)
 Article 21 (Right to Property)
 Article 25(1) (Right of Recourse Before a Competent Court)
 Article 25(2)(c) (Obligation to Ensure that Competent Authorities shall Enforce Proper Remedies)
all in relation to:
 Article 1(1) (Obligation of Non-Discrimination) and
 Article 2 (Obligation to Give Domestic Legal Effect to Rights)

2. Violations Alleged by Representatives of the Victims⁷¹

Same Violations Alleged by Commission, plus:

Article 26 (Right to Economic, Social and Cultural rights)
in relation to:
 Article 1(1) (Obligation of Non-Discrimination)

III. MERITS

A. *Composition of the Court*⁷²

Eduardo Ferrer Mac-Gregor Poisot, President

Eduardo Vio Grossi, Vice President

⁶⁷ Muelle Flores v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 8.

⁶⁸ *Id.*

⁶⁹ *Id.* ¶ 12.

⁷⁰ *Id.* ¶ 2(c).

⁷¹ *Id.* ¶¶ 7, 116-117. Renée Mariño Álvarez and Isabel Pen/lo de Campos Machado had been designated as Inter-American Public Defenders to act as legal representatives of Mr. Muelle Flores.

⁷² Judge Ricardo Pérez Manrique did not participate in the Judgement as he joined the Court during the Judgement stage. *Id.* n.*.

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Humberto Antonio Sierra Porto, Judge
 Elizabeth Odio Benito, Judge
 Eugenio Raúl Zaffaroni, Judge
 Patricio Pazmiño Freire, Judge

Pablo Saavedra Alessandri, Secretary

B. Decision on the Merits

March 6, 2019: The Court issues its Judgment on Merits, Reparations, and Costs.⁷³

The Court found unanimously:

To reject Peru's preliminary objection regarding a failure to exhaust domestic remedies,⁷⁴ because:

*The State failed to identify the specific remedies that were not exhausted during the admissibility stage of the proceedings, and therefore, the State's objection is barred by time.*⁷⁵

The Court decided, in a vote of four against two:

To reject Peru's preliminary objection regarding a lack of subject matter jurisdiction under Article 26,⁷⁶ because:

*The Court had already established that Article 26 establishes integral rights to the individual that are described in Articles 1(1) and 2, and therefore, the Court has jurisdiction to assess the violations of an individual's rights contained in Article 26.*⁷⁷

The Court found unanimously that Peru violated:

Articles 25(1) (Right of Recourse Before a Competent Court) and 25(2)(c) (Obligation to Ensure that Competent Authorities shall Enforce Proper Remedies), in relation to Article 1(1) (Obligation of

⁷³ Muelle Flores v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 1.

⁷⁴ *Id.* "Decides" ¶ 1.

⁷⁵ *Id.* ¶ 28.

⁷⁶ *Id.* "Decides" ¶ 2.

⁷⁷ *Id.* ¶¶ 33-36.

Non-Discrimination) alongside Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention, to the detriment of Mr. Muelle Flores,⁷⁸ because:

The Court found that Mr. Muelle Flores' due process rights had been violated since payment of the pension had been ordered in two amparo judgements as well as in an administrative action.⁷⁹ The Court divided its analysis into three sections: (1) failure to follow final judgements delivered by domestic courts; (2) privatization creating obstacles to enforcement of these domestic judgements; and (3) the lack of coercive measures to enforce domestic judgements and reverse effects of privatization.⁸⁰

Failure to follow the final judgments delivered by domestic courts:

The Court found the State-owned company chose not to comply with the ruling of the Supreme Court to pay Mr. Muelle Flores' pension and reinstate him in the pension plan.⁸¹ Although the amparo judgment was in favor of Mr. Muelle Flores, the State-owned company still chose not to comply.⁸² In addition, the State owned company filed an administrative action asking to find the inclusion of the pension scheme unlawful, which the court rejected.⁸³ The State did not take any steps to ensure compliance with each judgement in a prompt or effective manner.⁸⁴

Privatization Creating Obstacles to the Domestic Judgements:

The State-owned company created an obstacle to compliance with court orders when it privatized without addressing how employees entitled to a pension under Law Decree 20530 would be compensated.⁸⁵ The State should have complied with the Court orders promptly, and should have established which entity should comply with the court orders before the privatization occurred.⁸⁶ The Court held the State's failure to adopt the

⁷⁸ Muelle Flores v. Peru, Preliminary Objections, Merits, Reparations, and Costs, "Declares," ¶ 3.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.* ¶ 131.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Muelle Flores v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 130-131.

⁸⁵ *Id.* ¶ 133.

⁸⁶ *Id.* ¶ 137.

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*necessary safeguards prior to the privatization to protect Mr. Muelle Flores' rights created an unnecessary obstacle for Mr. Muelle Flores to obtain his pension.*⁸⁷

Domestic Judgement's Lack of Effectiveness:

*The Court considers that the State has a duty to ensure compliance with judgments of its courts by adopting legal measures that are coercive but necessary.*⁸⁸ *Although the State was responsible for ensuring that the Courts rulings were complied with, it did not employ any of the mechanisms available under domestic law to compel relevant State authorities or the private company to execute the payment of the pension.*⁸⁹ *Additionally, domestic courts failed to establish definitively whether any particular government authority or the private company had responsibility for Mr. Muelle Flores' pension after privatization.*⁹⁰ *The Court considers that the State must show special diligence where the claim effects social security of an elder person.*⁹¹

*Accordingly, the Court found that the State had violated Articles 25(1) (Right of Recourse Before a Competent Court) and 25(2)(c) (Obligation to Ensure that Competent Authorities shall Enforce Proper Remedies), in relation to Article 1(1) (Obligation of Non-Discrimination) alongside Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention.*⁹²

Article 8(1) (Right to a Hearing Within a Reasonable Time by a Competent and Independent Tribunal), in relation to Article 1(1) (Obligation of Non-Discrimination), to the detriment of Mr. Muelle Flores,⁹³ because:

*The Court found that an extended delay in judicial proceedings can constitute a violation of due process.*⁹⁴ *This also applies to final judgements that have not been promptly executed.*⁹⁵ *The Court*

⁸⁷ Muelle Flores v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 139.

⁸⁸ *Id.* ¶ 140.

⁸⁹ *Id.* ¶¶ 141-142.

⁹⁰ *Id.* ¶ 143.

⁹¹ *Id.* ¶ 148.

⁹² *Id.* ¶ 149.

⁹³ Muelle Flores v. Peru, Preliminary Objections, Merits, Reparations, and Costs, "Declares," ¶ 4.

⁹⁴ *Id.* ¶ 154.

⁹⁵ *Id.*

considers four elements in examining whether the court executed a judgement in a reasonable time: (1) complexity of the case; (2) the interested party's procedural activity; (3) judicial conduct; and (4) the legal effects on the individual.⁹⁶ The Court first noted that there were no elements of complexity within this present case.⁹⁷ As to the second element, the Court noted that Mr. Muelle Flores participated in the proceedings to reverse the suspension of the pension.⁹⁸ In regards to the third element, the Court observed that judicial authorities did not take necessary steps to ensure compliance of the judgments.⁹⁹ Finally, as to the final element, the Court established that due diligence was required as the case involved the right of an elder person.¹⁰⁰ Accordingly, the Court found that the judicial authorities did exceed a reasonable time during the process of executing its judgements in violation of Article 8(1) (Right to a Hearing Within a Reasonable Time by a Competent and Independent Tribunal), in relation to Article 1(1) (Obligation of Non-Discrimination).¹⁰¹

The Court found, in a vote of four against two, that the State had violated:

Article 26 (The Right to Economic, Social and Cultural rights), in relation to Articles 5 (Right to Humane Treatment), 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), 11(1) (Right to Honor and Dignity), 25(1) (Right of Recourse Before a Competent Court), 25(2) (Obligation to Ensure that Competent Authorities shall Enforce Proper Remedies), 1(1) (Obligation of Non-Discrimination), and 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention, to the detriment of Mr. Muelle Flores,¹⁰² because:

In this case, for the first time the Court declared the right to social security to be an economic, social, cultural, and environmental right

⁹⁶ Muelle Flores v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 155.

⁹⁷ *Id.* ¶ 159.

⁹⁸ *Id.* ¶ 160.

⁹⁹ *Id.* ¶ 161.

¹⁰⁰ *Id.* ¶ 162.

¹⁰¹ *Id.* ¶ 166.

¹⁰² Muelle Flores v. Peru, Preliminary Objections, Merits, Reparations, and Costs, "Declares," ¶ 5.

*protected by the Charter of the Organization of American States (OAS).*¹⁰³

*The Court started its analysis by declaring the right to social security to be an autonomous and justiciable right over which it has jurisdiction by virtue of Article 26 of the American Convention.*¹⁰⁴ *The Court found the right to social security to be one of the economic and social rights within the scope of the OAS Charter.*¹⁰⁵

*As to the normative content of the right, the Court explained that the purpose of the right to social security is to ensure everyone's right to life, health, and an adequate standard of living, especially in the later stages of life.*¹⁰⁶ *The Court noted the right to social security can be found, in various formulations, in the OAS Charter, the American Declaration, the Protocol of San Salvador, the Universal Declaration of Human Rights, the Constitution of Peru, and international jurisprudence.*¹⁰⁷ *The Court declared that it is the responsibility of the State to adopt measures ensuring individuals are granted the right to social security, and to ensure there are adequate judicial remedies when those rights are violated.*¹⁰⁸ *The State's responsibilities include supervising, administering, and auditing pension plans that are administered by private entities.*¹⁰⁹ *In addition, the State is responsible for ensuring those benefits are sufficient to provide a particular individual with an adequate standard of living.*¹¹⁰ *Furthermore, the State must ensure pensions are paid in a timely manner, and in the event that there is a violation of those rights, there must be effective mechanisms to ensure grievances are heard and addressed.*¹¹¹

*As to the specific case of Mr. Muelle Flores, the Court found that the privatization of a State-owned company does not absolve the State from its obligation to protect the rights of workers who worked for that company.*¹¹² *It is the responsibility of the State to ensure workers*

¹⁰³ *Id.* ¶ 171.

¹⁰⁴ *Muelle Flores v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 172-173.

¹⁰⁵ *Id.* ¶ 173.

¹⁰⁶ *Id.* ¶ 172.

¹⁰⁷ *Id.* ¶¶ 178-182.

¹⁰⁸ *Id.* ¶ 189.

¹⁰⁹ *Id.* ¶ 192.

¹¹⁰ *Muelle Flores v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, ¶ 192.

¹¹¹ *Id.*

¹¹² *Id.* ¶ 196.

continue receiving their pensions after the privatization.¹¹³ In the present case, ultimately, the State failed to ensure Mr. Muelle Flores' right to social security for over twenty-seven years, which negatively impacted his quality of life and his access to adequate health care as an elderly individual.¹¹⁴ The pension was the only income available to Mr. Muelle Flores, and during the years when he did not receive payments, his ability to pay for the basic necessities of life was prejudiced, affecting his dignity along with his moral and mental integrity.¹¹⁵

Articles 21(1) (Right to Property) and 21(2) (Right to Compensation in Case of Expropriation), in relation to Articles 25(1) (Right of Recourse Before a Competent Court), 25(2)(c) (Obligation to Ensure that Competent Authorities shall Enforce Proper Remedies), 26 (Right to Economic, Social and Cultural rights) and 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Mr. Muelle Flores,¹¹⁶ because:

The Court found that the right to property granted under Article 21(1) is a broad concept that may apply to both material and intangible objects.¹¹⁷ Benefits received from social security and pensions plans constitute an individual's property which must be protected by the State.¹¹⁸ The Court clarified that Mr. Muelle Flores rightfully earned the right to a pension under Law Decree 20530, which he received for just over one year before payment was unjustly suspended.¹¹⁹ The Court noted that Mr. Muelle Flores had not received any pension payments in over twenty-seven years.¹²⁰ As a result of the States noncompliance with the order of the Supreme and Constitutional Courts, the Court found that Mr. Muelle Flores' right to property under Articles 21(1) (Right to Property) and 21(2) (Right to Compensation in Case of Expropriation), in relation to Articles 25(1) (Right of Recourse Before a Competent Court), 25(2)(c) (Obligation to Ensure that Competent Authorities shall Enforce Proper Remedies), 26 (Right to Economic, Social and Cultural

¹¹³ *Id.*

¹¹⁴ Muelle Flores v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 207.

¹¹⁵ *Id.*

¹¹⁶ *Id.* "Declares," ¶ 6.

¹¹⁷ *Id.* ¶ 212.

¹¹⁸ *Id.* ¶ 214.

¹¹⁹ *Id.* ¶ 216.

¹²⁰ Muelle Flores v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 216.

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rights) and 1(1) (Obligation of Non-Discrimination) of the convention had been violated.¹²¹

C. Dissenting and Concurring Opinions

1. Separate Opinion of Judge Eduardo Ferrer Mac-Gregor Poisot

In a separate opinion, Judge Mac-Gregor Poisot addressed the importance of the Inter-American Court addressing the right to social security under Article 26.¹²² This case gives special relevance to a social group which has not been protected by the Inter-American Court for many years; those who are elderly and affected by disabilities.¹²³ Frequently, it is the most vulnerable social groups that are burdened by marginalization, poverty, and are continuously denied their basic rights.¹²⁴

2. Partially Dissenting Opinion of Judge Humberto Antonio Sierra Porto

In a separate opinion, Judge Sierra Porto held that the Court cannot assume jurisdiction over the right to social security under Article 26.¹²⁵ Furthermore, Judge Porto explains it was irrelevant to assess a violation of Article 26, because the case concerned “the failure to execute domestic judicial rulings,” and Mr. Muelle Flores’ right to his pension plan was properly analyzed under Articles 8(1), 25(1) and 25(2)(c) of the Convention, as well as Article 21(1) and 21(2).¹²⁶

3. Partially Dissenting Opinion of Judge Eduardo Vio Grossi

¹²¹ *Id.* ¶ 217.

¹²² Muelle Flores v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Eduardo Ferrer Mac-Gregor Poisot, Inter-Am Ct. H.R. (ser. C) No. 375, ¶ 1 (Mar. 6, 2019).

¹²³ *Id.* ¶¶ 63-68.

¹²⁴ *Id.*

¹²⁵ Muelle Flores v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Partially Dissenting Opinion of Judge Humberto Antonio Sierra Porto, Inter-Am Ct. H.R. (ser. C) No. 375, ¶ 40 (Mar. 6, 2019).

¹²⁶ Muelle Flores v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Partially Dissenting Opinion of Judge Humberto Antonio Sierra Porto, ¶ 40.

In a separate opinion, Judge Vio Grossi held the Court does not have jurisdiction to rule on Article 26 of the American Convention.¹²⁷ Judge Grossi also reasons that this case addresses the issues concerned with the “violation of the right to effective judicial protection,” and the States choice to not comply with several judicial orders.¹²⁸ The Commission chose not to allege violations of Article 26, and the Court does not have competence or jurisdiction to examine the violations of Article 26.¹²⁹ The Convention does not recognize the right to social security, and therefore that right cannot be protected by the Convention.¹³⁰

IV. REPARATIONS

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

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

1. Judgement as a Form of Reparation

The Court determined that the Judgment itself is a form of reparation.¹³¹

2. Domestic Judgement to Ensure Payment of Pension

The State must comply with domestic judgements re-establishing Mr. Muelle Flores’ pension and access to social security medical care.¹³²

3. Publish the Judgment

The State must publish, within six months, an official summary of the judgment in the Official Gazette and a widely circulated newspaper.¹³³

¹²⁷ Muelle Flores v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Partially Dissenting Opinion of Judge Eduardo Vio Grossi, Inter-Am Ct. H.R. (ser. C) No. 375, ¶ 83 (Mar. 6, 2019).

¹²⁸ Muelle Flores v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Partially Dissenting Opinion of Judge Eduardo Vio Grossi, ¶¶ 25-26.

¹²⁹ *Id.* ¶ 29.

¹³⁰ *Id.* ¶ 80.

¹³¹ Muelle Flores v. Peru, Preliminary Objections, Merits, Reparations, and Costs, “And Decides” ¶ 7.

¹³² *Id.* ¶ 232.

¹³³ *Id.* ¶ 239.

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The State must also publish the judgment in its entirety on an official website accessible to the public for at least one year.¹³⁴

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

The Court awarded \$10,000 to Mr. Muelle Flores as compensation for medical expenses.¹³⁵ The Court also awarded \$120,000.00 to Mr. Muelle Flores as compensation for the pension payments he failed to receive beginning on February 1, 1991, until the notification of this Court judgement.¹³⁶

2. Non-Pecuniary Damages

The Court awarded \$7,000 to Mr. Muelle Flores for the pain and suffering he endured while the State failed to execute judicial rulings that were already decided in his favor.¹³⁷

3. Costs and Expenses

The Court awarded \$10,000 for costs and expenses to Mr. Muelle Flores.¹³⁸ The Court further ordered potential reimbursement to Mr. Muelle Flores or his representatives for reasonable expenses incurred in monitoring compliance with the Judgment.¹³⁹ Lastly, the Court recognized the efforts of the Victim's Legal Assistance Fund and ordered the State to pay them \$2,334.04.¹⁴⁰

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

¹³⁴ *Id.*

¹³⁵ Muelle Flores v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 251.

¹³⁶ *Id.* ¶ 259.

¹³⁷ *Id.* ¶ 267.

¹³⁸ *Id.* ¶ 274.

¹³⁹ *Id.* ¶ 274.

¹⁴⁰ *Id.* ¶ 277.

\$149,334.04

C. Deadlines

The State must publish the Judgment in the ordered platforms within six months of this Judgment.¹⁴¹ Additionally, the State must pay the costs and expenses for Victim's Legal Assistance Fund within six months of the Judgment.¹⁴² All other damages are to be paid within six months of the notification of the Judgment.¹⁴³

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

[None]

VII. LIST OF DOCUMENTS

A. Inter-American Court

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations and Costs

Muelle Flores v. Peru, Preliminary Objections, Merits, Reparations and Costs, Judgement, Inter-Am Ct. H.R. (ser. C) No. 375, (Mar. 6, 2019).

¹⁴¹ Muelle Flores v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 278.

¹⁴² *Id.* ¶ 277.

¹⁴³ *Id.* ¶¶ 259, 267.

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Muelle Flores v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Eduardo Ferrer Mac-Gregor Poisot, Inter-Am Ct. H.R. (ser. C) No. 375, (Mar. 6, 2019).

Muelle Flores v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Partially Dissenting Opinion of Judge Eduardo Vio Grossi, Inter-Am Ct. H.R. (ser. C) No. 375, (Mar. 6, 2019).

Muelle Flores v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Partially Dissenting Opinion of Judge Humberto Antonio Sierra Porto, Inter-Am Ct. H.R. (ser. C) No. 375, (Mar. 6, 2019).

3. Provisional Measures

Muelle Flores v. Peru, Provisional Measures, Order of the President of the Court, Inter-Am Ct. H.R., (ser. E) (July 27, 2018).

Muelle Flores v. Peru, Provisional Measures, Order of the Court, Inter-Am Ct. H.R., (ser. E) (Mar. 6, 2019).

4. Compliance Monitoring

Muelle Flores v. Peru, Monitoring Compliance with Judgement, Order of the Court, Inter-Am Ct. H.R., (Mar. 12, 2020).

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[None]

2. Report on Admissibility

Muelle Flores v. Peru, Admissibility Report, Report No. 106/10, Inter-Am. Comm'n H.R., Case No. Case 12.772, (July 16, 2010).

3. Provisional Measures

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Muelle Flores v. Peru, Summary of the Court, Inter-Am. Comm'n H.R., Case No. 12.772, (Jan. 27, 2017).

4. Report on Merits

Muelle Flores v. Peru, Report on Merits, Report No. 3/17, Inter-Am. Comm'n H.R., Case No. 12.772, (Jan. 27, 2017).

5. Application to the Court

Muelle Flores v. Peru, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.772, (July 13, 2017).

VIII. BIBLIOGRAPHY