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**REPORT No. 123/18**

**PETITION 1516-08**

FRIENDLY SETTLEMENT

JUAN FIGUEROA ACOSTA

PERÚ

Approved electronically by the Commission on October 16, 2018.

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**I. SUMMARY AND PROCEEDINGS BEFORE THE COMMISSION**

1. On December 29, 2008, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") received a petition filed by Mrs. Patricia Figueroa Valderrama, Mayra Figueroa Valderrama and Mr. Juan Figueroa Acosta (hereinafter "the petitioners") alleging the responsibility of the State of Peru (hereinafter "the State" or "the Peruvian State") for alleged violations of the guarantees of due process and judicial protection to the detriment of Mr. Juan Figueroa Acosta, on the occasion of the ratification procedure followed by the National Council of Judges (hereinafter "the CNM"), whereby he was removed from his position of Senior Member of the Judicial District of the Province of Amazonas.

2. The petitioners alleged the violation of the rights contained in Articles 8 (judicial guarantees) and 25 (judicial protection) of the American Convention on Human Rights (hereinafter "the Convention" or the "American Convention"), in accordance with Articles 1 and 2 of said instrument.

3. On April 11, 2014, the Commission sent the relevant sections of the petition to the State and made itself available to the parties in order to reach a friendly settlement in the case. In a communication dated August 20, 2017, Mr. Figueroa reported that he had been in communications with the State with a view to reaching a friendly settlement of his case. In view of the foregoing, the Commission forwarded the petitioners' communication to the State and asked it to acknowledge its interest in initiating a friendly settlement proceeding before the IACHR.

4. In a communication dated April 25, 2018, the State reported the signing of the friendly settlement agreement with Mr. Juan Figueroa Acosta, submitted a copy thereof and requested that it be formalized as soon as possible. The Commission sent this information to Mr. Figueroa and the latter, in a communication received on August 28, 2018, acknowledged his consent to the friendly settlement agreement and its prompt formalization.

5. Pursuant to Article 49 of the American Convention and Article 40.5 of the Commission's Rules, this report presents a summary of the facts alleged by the petitioners and reproduces the friendly settlement agreement signed on April 23, 2018, between the petitioners and the State's representatives. In addition, the report makes a determination regarding its compatibility with the object and purpose of the American Convention, its approval and publication in the Annual Report of the IACHR to the General Assembly of the Organization of American States.

**II. ALLEGED FACTS**

6. The petitioners alleged that in October 1996, Mr. Juan Figueroa Acosta was appointed Senior Member of the Judicial District of the Amazonas and was President of said Court in 1997 and 1998. They added that in 2003 he was called, together with 24 other magistrates and 18 prosecutors, to a proceeding of ratification in office, in accordance with Article 154, para. 2 of the Political Constitution of Peru. This provision establishes that every seven years the National Council of Judges must decide whether or not to ratify judges and prosecutors and that those not so ratified are immediately and definitively removed from their position and cannot rejoin the judiciary. They also indicated that the constitutional rule establishes that the ratification process is independent of disciplinary measures and is not subject to judicial review.

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<sup>1</sup> Commissioner Francisco José Eguiguren Praeli, of Peruvian nationality, did not participate in either the discussion or decision in the present case, in accordance with Article 17.2.a) of the Commission's Rules of Procedure.

7. The petitioners stated that on February 7, 2004, Mr. Juan Figueroa Acosta's non-ratification formally came into effect, without any grounds, and despite his having had a clean record of service, without sanctions or a criminal history and with a record of no procedural backlog. They indicated that even though he knew that there were no available remedies, he filed a writ of *amparo* that was rejected in April 2005 on the grounds of lack of evidence on the violation of a constitutional right. They added that he appealed this decision before the Third Civil Chamber of the Superior Court of Justice of Lima that upheld the first instance decision. Finally, in a decision of the Constitutional Court on November 13, 2007, the claim filed by the alleged victim was found to be without merit, on the grounds that according to existing precedents the National Council of Judges did not have to provide grounds for its ratifications or non-ratifications, and that therefore the alleged victim's constitutional rights had not been violated.

### III. FRIENDLY SETTLEMENT

8. On April 23, 2018, in the city of Lima, the Peruvian State and the Petitioners signed a friendly settlement agreement, the text whereof establishes the following:

#### FRIENDLY SETTLEMENT AGREEMENT 01-2018

This document bears the Friendly Settlement Agreement regarding Petition P-1516-08, before the Inter-American Commission on Human Rights (hereinafter, the IACHR), entered into by:

##### **The Peruvian State:**

Duly represented by Sofía Janett Donaires Vega, Special Supranational Deputy Public Prosecutor, appointed by Supreme Resolution No. 005-2018-JUS, published on April 19, 2018 in the official newspaper *El Peruano*,

and,

##### **The Petitioner before the Inter-American Commission on Human Rights:**

Juan Figueroa Acosta (P-1516-08), identified by National Identity Document [...] and with legal address in [...], who personally signs the present agreement in its own right, and who hereinafter will be identified as the petitioner.

#### FIRST CLAUSE

##### **ACKNOWLEDGMENT OF RESPONSIBILITY BY THE PERUVIAN STATE**

The State acknowledges that the process of ratification of judges and prosecutors, carried out before the entry into force of the Constitutional Procedural Code (Law No. 28237) on December 1, 2004, although in accordance with the interpretation of the applicable rules made by the pertinent instances, failed to incorporate certain guarantees of effective procedural protection, particularly the requirement of a reasoned decision, which must be observed in all types of proceedings. This, in light of the provisions of the Political Constitution of Peru, the human rights treaties binding the Peruvian State, the applicable case law on the subject from the Inter-American Court of Human Rights, as well as from the Constitutional Court.

#### SECOND CLAUSE

##### **EFFECTS OF ACKNOWLEDGMENT OF RESPONSIBILITY**

In accordance with the provisions of the First Clause of this Agreement and by virtue of international human rights standards binding the Peruvian State, and in accordance with the provisions of the Political Constitution of Peru, both parties consider that it is in accordance with the law that the National Council of Judges should annul the resolutions declaring the

non-ratification of the judge included in the present friendly settlement. Consequently, the judge should regain his position as such with the following effects:

### **1.1 Restoration of Title**

The National Council of Judges will restore the corresponding title within fifteen business days counted from the formalization by the Inter-American Commission on Human Rights of this friendly settlement agreement.

### **1.2 Recognition of Service**

The Peruvian State, through the Judicial Branch, undertakes to acknowledge the period of service during which the petitioner did not exercise his functions, as from the date of the Resolution of non-ratification, for the purposes of calculating his length of service and retirement in accordance with Peruvian law.

### **1.3 Pension contributions**

According to domestic law –Decree-Law No. 19990, Decree-Law No. 20530 and Law 25897— the worker is responsible for the pension contribution and therefore in this case the petitioner signatory to this agreement will undertake payment of the pension contributions for the recognized years of service.

## **THIRD CLAUSE LEGAL BASIS**

This Agreement is signed in accordance with the provisions of Articles 2 (Fundamental Rights of the person), 44 (Primary Duties of the State), 55 (Validity of Treaties), 205 (Supranational Jurisdiction) and of the Fourth Final and Transitory Provision (Interpretation of Fundamental Rights), of the Political Constitution of Peru; Articles 1 (Obligation to respect rights), 2 (duty to adopt provisions of domestic Law), 8 (Judicial Guarantees) and 48(I)(f) (Friendly Settlement) of the American Convention on Human Rights, and Article 40 of the Rules of the Inter-American Commission on Human Rights.

## **FOURTH CLAUSE INTERPRETATION**

The meaning and scope of this Agreement shall be interpreted in accordance with Articles 29 and 30 of the American Convention on Human Rights, as far as is relevant and with the principle of good faith. In case of doubt or disagreement between the parties about the content of this Agreement, the Inter-American Commission on Human Rights shall decide on its interpretation. It shall also verify fulfillment of the agreement and the parties must report on its status and compliance.

## **FIFTH CLAUSE FORMALIZATION BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (IACHR)**

This Friendly Settlement Agreement is subject to formalization by the Inter-American Commission on Human Rights. The Peruvian State undertakes to request its formalization as soon as possible, and once formalized to bring it to the attention of the National Council of Judges (CNM) so that it may proceed with the restoration of the titles of appointment in accordance with the second clause.

## **SIXTH CLAUSE ASSIMILATION**

The parties signing the present Friendly Settlement Agreement express their free and voluntary consent and acceptance of the content of each and every one of its clauses, herewith expressly recording the end of the dispute and of any claim against the Peruvian State, in national and/or international fora, in connection with the facts acknowledged by the State. This declaration of finality includes any claim for compensation or liability against the Peruvian State that with the signing of this Friendly Settlement Agreement, shall be deemed fully satisfied.

Lima, April 23, 2018.

Signatures

#### **IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE**

11. The IACHR reiterates that according to Articles 48.1.f and 49 of the American Convention, this proceeding is aimed at "reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention." When accepting to carry out this procedure, the State expresses its good faith in complying with the purposes and objectives of the Convention by virtue of the *pacta sunt servanda* principle, by which States must fulfill in good faith the obligations undertaken in the treaties. It should be mentioned that the friendly settlement procedure contemplated in the Convention allows for the termination of individual cases in a non-adversarial manner and has shown, in cases concerning several countries, to offer an important avenue for a solution, which can be used by both parties.

12. The Inter-American Commission appreciates the efforts made by both parties in reaching a friendly settlement, which is compatible with the object and purpose of the Convention. The IACHR observes that, in accordance with the provisions of the friendly settlement agreement, the parties have jointly requested that the Commission adopt the report contemplated in Article 49 of the American Convention.

13. The Commission appreciates the acknowledgment of international responsibility of the Peruvian State, enshrined in the first clause of the friendly settlement agreement regarding the lack of effective protection in the process of ratification of judges and prosecutors, particularly with regard to the requirement of a reasoned decision, which must be observed in all kinds of procedures. It also notes that the State has undertaken to comply with clause two; specifically, to restore the title of Mr. Juan Figueroa Acosta, within fifteen business days of the approval of the Report by the IACHR. In this regard, the Commission requests the parties to inform it promptly of said compliance by the State, as well as the corresponding recognition of the period of service, also established in the second clause. The Commission notes that the other clauses contained in the friendly settlement agreement are of a declaratory nature.

#### **V. CONCLUSIONS**

14. The Commission appreciates the acknowledgment of international responsibility of the Peruvian State, enshrined in the first clause of the friendly settlement agreement. From the foregoing information it is clear that the commitments undertaken in this agreement are pending compliance, and therefore the Commission will continue to monitor the process. In that regard, it urges the State to comply as quickly as possible with the reparation measures undertaken in said agreement and submit to the Commission as soon as possible a compliance plan including the scheduling of the measures to be adapted.

15. Based on the foregoing considerations, and in accordance with the procedure provided for in Articles 48.1.f and 49 of the American Convention, the Commission wishes to express its appreciation for the efforts made by the parties and its satisfaction on achieving a friendly settlement in the present case, based on respect for human rights, and compatible with the object and purpose of the American Convention

16. In light of the considerations and conclusions set forth in this report

**THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS DECIDES:**

1. To approve the terms of the friendly settlement agreement signed by the parties on April 23, 2018.
2. Continue monitoring compliance with the commitments established in the friendly settlement agreement until they are complied with in full. To this end, the parties are reminded of their commitment to report periodically to the IACHR on compliance with this agreement.
3. To publish this report and include it in its Annual Report to the General Assembly of the OAS.

Approved by the Inter-American Commission on Human Rights on the 16<sup>th</sup> day of the month of October, 2018. (Signed): Margarete May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Joel Hernández, Antonia Urrejola and Flávia Piovesan, Commissioners.