

TECHNICAL INFORMATION SHEET
CASE N° 12.383 NÉSTOR ALEJANDRO ALBORNOZ EYZAGUIRRE
REPORT ON FRIENDLY SETTLEMENT N° 137/17
TOTAL COMPLIANCE
(PERU)

I. SUMMARY OF THE CASE

Victim (s): Néstor Alejandro Albornoz Eyzaguirre

Petitioner (s): Javier Mujica, Luis Huancapaza, Néstor Albornoz Eyzaguirre

State: Peru

Report on Friendly Settlement Agreement: 137/17, published on October 25, 2017

Related Rapporteurship: N/A

Issues: Due process/ Guarantees of judicial protection

Facts: The case refers to the responsibility of the State of Peru for violation of human rights because of the victim's arbitrary dismissal from his position as an employee at a public educational institution. On March 18, 2008, *Centro de Asesoría Laboral de Perú* (CEDAL) took over the alleged victim's representation. The petitioner argued that he was arbitrarily and unconstitutionally removed from his position as Director of Augusto Salazar Bondi School (State School No. 2023), against which he filed petition for constitutional protection [*Writ of Amparo*] that was granted by the Fifth Civil Court of the Judicial District of the Northern Cone of the City of Lima. However, it was argued that judgment was overturned on appeal by the Second Civil Division of the Superior Court of Justice of the Northern Cone of the City of Lima and said decision was later confirmed by the Constitutional Court of Peru.

Rights Alleged: The petitioners alleged the international responsibility of the State for violations of the rights enshrined in Articles 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention on Human Rights, for the arbitrary dismissal from his position as an employee at a public educational institution.

II. PROCEDURAL ACTIVITY

1. On February 27, 2002, the parties signed a friendly settlement agreement.
2. On October 25, 2017, the Commission approved the friendly settlement agreement in its Report No.137/17.

III. ANALYSIS OF COMPLIANCE WITH THE CLAUSES OF THE FRIENDLY SETTLEMENT AGREEMENT

Agreement Clause	Status of Compliance
ONE. - FIRST This friendly settlement agreement, entered into is in accordance with the provisions of Articles 48(1)(f) and 49 of the American Convention on Human Rights (hereinafter	Declarative Clause

<p>the Commission) (<i>sic</i>) and 41 of the Rules of Procedure of the Inter-American Commission on Human Rights (hereinafter the Commission or IACHR), has previously been submitted to the IACHR for prior approval for the corresponding purposes.</p>	
<p>TWO. - SECOND The agreement hereby concluded originated from the claim submitted for international settlement by Néstor Alejandro Albornoz Eyzaguirre to the IACHR on July 20, 1998, for violation of his human rights enshrined in Articles 8 and 25 of the American Convention on Human Rights. Acting as co-petitioner in the aforementioned claim is the Human Rights Program of Centro de Asesoría Laboral del Perú (CEDAL), accredited correspondent in Peru of the International Federation for Human Rights (FIDH).</p>	
<p>The alleged violation was originated with the termination, by Resolution No. 196-96-ED issued by the General Secretariat of the Ministry of Education on May 6, 1996, of Mr. Albornoz Eyzaguirre position as director of State School No. 2023, known as Augusto Salazar Bondy School, situated in the District of San Martín de Porres, Lima. That resolution prompted the filing of several remedies under domestic law challenging the decision, which, however, were not suitable to repair the grievances caused. As a result of this situation, the petitioner resorted to the Commission by virtue of the constitutional right afforded to citizens of Peru by Article 205 of the National Constitution.</p>	<p>Declarative Clause</p>
<p>The petition led to the opening of case No. 12.383, a proceeding in which a decision by the Commission on the merits of the matter submitted to its jurisdiction is currently pending.</p> <p>It should be noted that on September 28, 2001, the Permanent Mission of Peru to the Organization of American States (OAS) forwarded Report No. 77-2001-JUS/CND-SE from the Executive Secretariat of the National Council of Human Rights of the Ministry of Justice, by which the Peruvian State recognized that “the petition lodged meets the requirements of admissibility set forth in the relevant international instruments” as required by the applicable international standards on such matters.</p>	
<p>THREE. - THIRTH In accordance with the principle of <i>pacta sunt servanda</i> and the provisions contained in Articles 26 and 27(1) of the Vienna Convention on the Law of Treaties, which Peru has formally ratified, the Peruvian Government recognizes that “[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith,” and that it “may not invoke the provisions of its internal law as justification for its failure to perform a treaty”.</p>	
<p>In keeping with the above principle and provisions, as well as its declared commitment to promote and defend the human rights of its citizens, the Government of Peru has recognized the need to review events that occurred during the former Fujimori regime (1990–2000), in particular any acts that may have led to a violation of their basic rights, and to adopt measures conducive to the comprehensive and effective reparation of damages caused, in accordance with the law, the Constitution, and the American Convention on Human Rights, to which it is a party.</p>	<p>Declarative Clause</p>

FOUR. - FOURTH

Inspired by such principles, both parties hereby formally register their intention to reach a friendly settlement of the dispute in Case 12.383 and, by virtue of that settlement:

a) The State will repeal Resolution No. 196-96-ED issued by the General Secretariat of the Ministry of Education on May 6, 1996, and reinstate Néstor Albornoz Eyzaguirre to his position and regular working duties as director of State School No. 2023, known as Augusto Salazar Bondy School, situated in the District of San Martín de Porres. The repealing resolution that will be published in the Official Gazette "El Peruano" will include apologies from the Peruvian State for the damages unnecessarily inflicted on Mr. Albornoz by the regime that governed Peru from 1990 to 2000.

b) The aforementioned reinstatement includes recognition of period of service and all the other rights to which he is entitled by virtue thereof, except the payment of salaries due or of arrears of salaries.

c) Mr. Néstor Alejandro Albornoz Eyzaguirre, for his part, declines to continue with the proceeding instituted before the IACtHR that led to the opening of Case No. 12.383.

Total¹

IV. LEVEL OF COMPLIANCE OF THE CASE

3. The Commission declared total compliance with the case in its Report on Friendly Settlement No.137/17, dated October 25, 2017.

IV. INDIVIDUAL AND STRUCTURAL OUTCOMES OF THE CASE

A. Individual outcomes of the case

- Resolution No. 196-96-ED of May 6, 1996, was repealed.
- Mr. Néstor Albornoz was reinstated to his position as Director of the Augusto Salazar Bondy State Education Center No.2023, in the District of San Martín de Porres.
- A recognition of the time of service and all other social benefits to which the beneficiary was entitled by virtue of his contract.
- An apology was given to Mr. Albornoz for the damage caused.

¹ IACtHR, Report No. 137/17, Case 12.383. Friendly Settlement. Néstor Albornoz Eyzaguirre. Peru. October 25, 2017.